



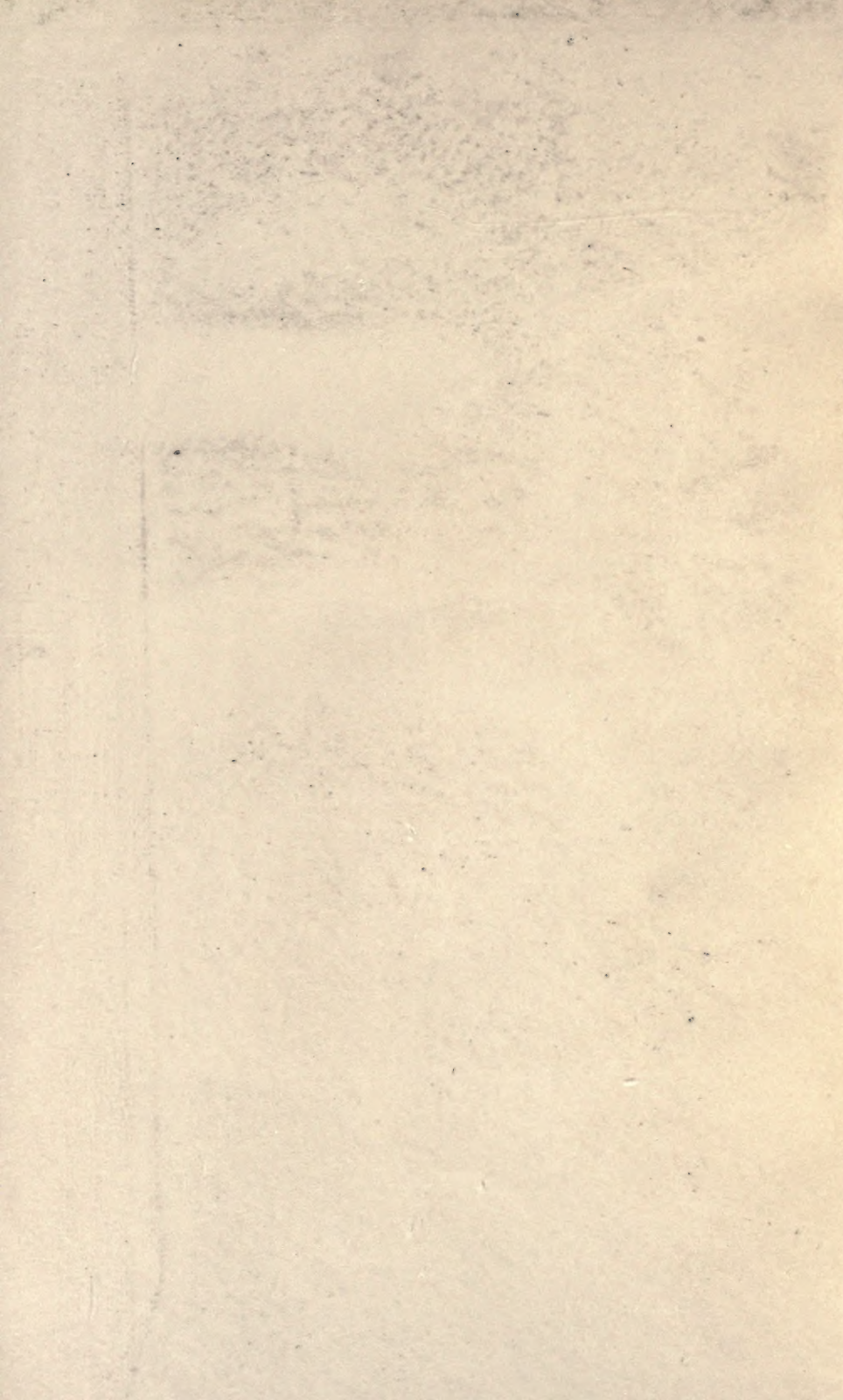





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# HARRIS' PUBLIC LAND GUIDE

## A COMPILATION OF PUBLIC LAND LAWS AND DEPARTMENTAL REGULATIONS THEREUNDER

REVISED STATUTES AND ACTS OF CONGRESS ANNOTATED  
WITH DECISIONS OF THE DEPARTMENT OF THE  
INTERIOR RELATING TO PUBLIC LAND

## A GUIDE SHOWING THE LOCATION OF VACANT LANDS BY COUNTIES AND STATES ON JULY 1ST, 1911

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The homestead, desert, timber and stone, isolated tracts, mineral, oil, gas, petroleum, reclamation, scrip, townsites and parks, and other important laws relating to public land, with Departmental Regulations thereunder, compiled together with RULES OF PRACTICE annotated.

The work treats many subjects from abandonment to words and phrases, among which are applications, absences, accretions, alienation, administrator, approximation, assignments, amendments, contests, cancellations, canals and ditches, citizenship, Carey Act, claims (private), coal lands, commutation, cultivation, death of entrymen, decisions, depositions, desert land, deserted wife, equitable homesteads, fees, fencing, forest lands, guardian, gas lands, homesteads, improvements, insanity, isolated tracts, judgment, jurisdiction, Kinkaid law, lieu selection, lost and obliterated corners, married women, mill sites, mineral claims, mining, mortgages, newspapers, occupancy, oil lands, parks and cemeteries, petroleum, practice, railroad grants, repayment, relinquishments, reclamation lands, residence, supervisory control, settlements, second entries, soldiers' homesteads, soldiers' additional rights, scrip regulations, States and Territories, town lots, United States Commissioners, vacant lands, widows and heirs, wagon roads, witnesses, withdrawals, words and phrases, and other important matter relating to public lands.

The work contains important approved forms in use by the Department of the Interior, also a number of unapproved forms.

It contains a table of circulars, instructions and regulations; a table of overruled and modified cases, and a table of revised statutes and laws with annotations dating from Volume 1 of decisions of the Department of the Interior relating to public lands.

The digest and other features of the work will be found useful in the investigation of the subjects treated.

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BY

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OF THE YELLOWSTONE COUNTY MONTANA BAR, BILLINGS, MONTANA

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## PREFACE.

There is need for a work of this nature. That will explain the reason for the publication.

We have not attempted to compile all of the public land laws, nor all of the rules and regulations of the Department of the Interior thereunder. We have addressed our efforts to the more important of the public land laws, and official regulations thereunder. The work covers a wide range of subjects. We have attempted to present the law, the official regulation thereunder, and the decisions of the Department of the Interior, so the reader may draw his own conclusion as to what doctrine to follow.

The index method should be understood in order that the best results may be obtained. Read instructions HOW TO USE INDEX.

That mistakes have been made is as sure as human accuracy is given to err in such matters. We have exercised such care as would justify the belief that the work will be found uniformly trustworthy.

It is not a digest, analysis, or an annotated work, although it contains some of each of such features. It is intended to meet the wants of the lawyer, the entryman, and those having to do with public lands, to the end that their labors may be lessened in investigating the subjects treated herein.





## HOW TO USE INDEX.

First. This work is indexed by subjects. The subjects contain a separate index, either at the commencement or at the end of the subject. By referring to such subject indexes you will readily find the matter under investigation. For example, suppose you are looking up the matter of leave of absence under the three year homestead law. You will first turn to the subject index, which will give you the page number of the subject of leave of absence. When this subject is located you will find a short contents index, and under title 5 you will find the matter we are investigating. Turn to the corresponding number and this will give you the law and regulations of leave of absence as applied to the three year homestead law.

Second. In cases where the subjects are short, contents indexes are not given. The subject index in such cases will be found sufficient.

Third. How to find a section of the Revised Statutes. Supposing you are looking up Sec. 2289 of the Revised Statutes, and first you wish to know whether or not this section is contained in this book. Turn to the table of Revised Statutes cited and construed, page 342, and if the section appears in the work the fact will be noted in boldface type, giving the page number. In the table mentioned you will find the decisions of the Department of the Interior construing or citing this section. The same rule should be followed in locating an act of Congress. For example, if we are looking for the Act of June 22, 1910 (36 Stat., 583), we will consult the table of acts of Congress cited and construed; turning to statute No. 36-583, under date given, we will find the act, and if the same appears in the work the fact will be indicated by **boldface type**, giving page number. Here, too, you will find all the decisions of the Department of the Interior construing this statute.

Fourth. Overruled and modified cases. When you find a citation or decision and you wish to know whether or not the same has been overruled or modified, consult table of Overruled and Modified Cases, and this will give you the information. This work covers all of volumes 1 to 39, inclusive, and 608 pages of volume 40 of the decisions of the Department of the Interior relating to public lands.

Fifth. How to find circulars. If you know the number of the circular consult the subject index. If the circular was issued without number consult Table of Circulars, Regulations and Instructions, under the subject in which you are interested. If you do not find what you are looking for under one head try another, continuing this practice till you locate the circular. When found you will find notation of all circulars issued on that subject, and if the same appears in the work the page number will be indicated in boldface type. The circular will be found by referring to the volume and page of the land decisions as given in the table.



It may be said without exception that all circulars, regulations and instructions are based upon either a Revised Statute or an act of Congress. When these laws are found, all the decisions thereunder will be found by consulting the Table of Revised Statutes and acts of Congress cited and construed.

The following circular showing vacant lands is a reproduction of the one issued by the General Land Office at Washington, D. C.

Department of the Interior,  
General Land Office,  
July 1, 1911.

[Circular No. 42.]

#### **VACANT PUBLIC LANDS IN THE UNITED STATES.**

The following tables, based on reports furnished by the district land offices, show, by States, Territories, land districts, and counties, the area of unappropriated and unreserved public lands, surveyed and unsurveyed, and a brief description of the character of the vacant lands. No more specific description of the character of the land, climate, water, or timber can be given by the General Land Office. Counties and States in which there are no unappropriated lands are omitted.

A township diagram, showing only entered lands in any township, can be procured by sending \$1 to the register and receiver of the land office for that district. The diagram required should be specified by township and range number.

While the figures in the tables may not be absolutely correct, owing to liability of error in a work of such magnitude and to the necessity of making estimates of unsurveyed lands, it is believed that they afford a close approximation to the actual areas. The statement is intended to inform correspondents and the general public as to whether there is much or little public land in the several land States and Territories and the land districts therein and in particular counties or localities.

In many counties only a few acres are reported as vacant. Neither the General Land Office nor the local land officers can furnish information as to the location of such tracts, but such information may be obtained from the records of the local land offices, which, when not in official use, are open to inspection by prospective home seekers or their agents.

Before entry personal inspection of the lands should be made to ascertain if they are suitable, and when the applicant is satisfied on this point entry can be made at the local land office in the manner prescribed by law, under the direction of the local land officers, who will give full information. Should anyone desire information in regard to vacant lands in any district before going there for a personal inspection, he should address the register and receiver of the proper local land office, who will give full information regarding vacant lands and the steps necessary to be taken in making entry.

All vacant unappropriated public lands, nonmineral and non-saline in character, are subject to entry under the homestead laws.



# VACANT PUBLIC LANDS IN THE UNITED STATES.

Statement, by States, Territories, Land Districts, and Counties, Showing the Area of Land Unappropriated and Unreserved on July 1, 1911.

[Counties containing no unappropriated lands are omitted.]

## ALABAMA.

Land district and county.	Area unappropriated and unreserved.			Brief description of character of unappropriated and unreserved land.
	Surveyed.	Unsurveyed.	Total.	
Montgomery :	Acres.	Acres.	Acres.	
Baldwin .....	1,500	.....	1,500	Marshy pine lands.
Barbour .....	280	.....	280	Agricultural lands, hilly.
Bibb .....	80	.....	80	Mountainous.
Blount .....	800	.....	800	Do.
Butler .....	80	.....	80	Pine lands, hilly, sandy.
Calhoun .....	1,800	.....	1,800	Hilly, diversity of soil.
Cherokee .....	2,480	.....	2,480	Mountainous.
Chilton .....	340	.....	340	Pine lands, sandy.
Choctaw .....	2,100	.....	2,100	Timbered, sandy soil.
Clarke .....	340	.....	340	Pine and agricultural.
Clay .....	4,160	.....	4,160	Hilly and broken, mountainous.
Cleburne .....	5,360	.....	5,360	Do.
Colbert .....	440	.....	440	Mountainous.
Coosa .....	1,200	.....	1,200	Uneven, sandy soil.
Covington .....	640	.....	640	Level, sandy.
Crenshaw .....	80	.....	80	Hilly, rolling lands.
Cullinan .....	840	.....	840	Mountainous.
Dale .....	400	.....	400	Pine lands, level, sandy.
Dekalb .....	840	.....	840	Mountainous.
Elmore .....	80	.....	80	Pine lands, varied soil.
Escambia .....	480	.....	480	Pine lands, light, sandy.
Etowah .....	240	.....	240	Mountainous.
Fayette .....	1,700	.....	1,700	Mountainous, hilly.
Franklin .....	3,000	.....	3,000	Mountainous.
Geneva .....	200	.....	200	Pine lands, light, sandy.
Hale .....	80	.....	80	Hilly, broken, sandy.
Henry .....	320	.....	320	Broken, sandy soil.
Houston .....	320	.....	320	Do.
Jackson .....	6,840	.....	6,840	Mountainous, hilly, broken.
Lamar .....	1,800	.....	1,800	Mountainous.
Lauderdale .....	6,760	.....	6,760	Barren.
Lawrence .....	11,760	.....	11,760	Mountainous.
Madison .....	6,640	.....	6,640	Barren, mountainous.
Marion .....	6,040	.....	6,040	Flat, sandy, part marshy.
Marshall .....	2,200	.....	2,200	Broken, hilly, sandy.
Mobile .....	2,720	.....	2,720	Mountainous.
Monroe .....	160	.....	160	Hilly, pine lands.
Morgan .....	1,640	.....	1,640	Pine lands, hilly, sandy.
Perry .....	80	.....	80	Pine lands, rolling.
Pickens .....	1,240	.....	1,240	Mountainous, hilly, rocky.
Pike .....	160	.....	160	Mountainous, hilly, varied soil.
Randolph .....	240	.....	240	Hilly, rough, varied soil.
St. Clair .....	600	.....	600	Undulating, soil sandy and red.
Shelby .....	440	.....	440	Mountainous, hilly, varied soil.
Sumter .....	340	.....	340	Hilly, red and gray sandy soil.
Talladega .....	2,400	.....	2,400	Hilly, broken, diversified soil.
Tallapoosa .....	200	.....	200	Do.
Tuscaloosa .....	1,200	.....	1,200	Pine lands, rolling.
Walker .....	240	.....	240	Uneven pine lands, sandy.
Washington .....	5,000	.....	5,000	Mountainous.
Wilcox .....	160	.....	160	
Winston .....	11,160	.....	11,160	
State total...	100,200	.....	100,200	

## ARIZONA.

Phoenix :				
Apache .....	1,000,733	490,828	1,491,561	Mountainous, arid; graz. & timb.
Cochise .....	1,455,463	1,013,411	2,468,874	Mountainous and grazing lands.
Cocino .....	2,382,129	2,403,939	4,786,068	Mountainous, grazing, timber.
Gila .....	246,405	1,118,653	1,365,058	Arid and broken.
Graham .....	805,851	1,229,701	2,035,552	Mountainous, graz. and arid lands.
Maricopa .....	798,618	3,372,917	4,171,535	Arid, grazing, broken.
Mohave .....	1,003,488	6,679,992	7,683,480	Do.
Navajo .....	1,119,963	392,363	1,513,326	Do.
Pima .....	1,070,855	3,507,609	4,578,464	Mountainous, arid, & graz. lands.
Pinal .....	354,399	1,794,610	2,149,009	Arid and grazing lands.
Santa Cruz .....	213,125	47,433	260,558	Mountainous, arid, & graz. lands.
Yavapai .....	951,498	2,055,320	3,006,818	Mountainous, timber, grazing.
Yuma .....	637,901	4,874,679	5,512,580	Arid, grazing, broken.
Terr. total...	12,040,428	28,982,455	41,022,883	

## VACANT PUBLIC LANDS—Continued.

## ARKANSAS.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
	Acres.	Acres.	Acres.	
Camden :				
Ashley .....	322	.....	322	Rolling, second and third rate soil.
Bradley .....	407	.....	407	Swampy.
Calhoun .....	734	.....	734	Do.
Clark .....	553	.....	553	Broken.
Cleveland .....	431	.....	431	Rolling, second and third rate soil.
Columbia .....	678	.....	678	Rolling.
Drew .....	80	.....	80	Do.
Garland .....	6,313	.....	6,313	Mountainous.
Hempstead .....	454	.....	454	Timber.
Hot Spring .....	4,006	.....	4,006	Mountainous.
Howard .....	6,965	.....	6,965	Very broken.
Lafayette .....	1,089	.....	1,089	Level and poor.
Little River .....	156	.....	156	Swampy.
Miller .....	819	.....	819	Do.
Montgomery .....	9,107	.....	9,107	Mountainous.
Nevada .....	727	.....	727	Timber.
Osachita .....	238	.....	238	Do.
Pike .....	5,407	.....	5,407	Mountainous.
Polk .....	16,981	.....	16,981	Do.
Saline .....	1,129	.....	1,129	Do.
Sevier .....	6,375	.....	6,375	Swampy.
Union .....	444	.....	444	Flat and swampy.
Total .....	63,415	.....	63,415	
Harrison :				
Baxter .....	50,160	.....	50,160	Productive; mountainous, timbered, and mineral.
Benton .....	10,160	.....	10,160	Do.
Boone .....	9,800	.....	9,800	Do.
Carroll .....	21,040	.....	21,040	Do.
Crawford .....	240	.....	240	Do.
Franklin .....	1,840	.....	1,840	Do.
Fulton .....	21,820	.....	21,820	Do.
Independence .....	2,120	.....	2,120	Do.
Izard .....	17,620	.....	17,620	Do.
Johnson .....	760	.....	760	Do.
Madison .....	26,340	.....	26,340	Do.
Marion .....	15,380	.....	15,380	Mountainous, mineral.
Newton .....	42,300	.....	42,300	Productive; mountainous, timbered, and mineral.
Searcy .....	40,140	.....	40,140	Do.
Stone .....	19,960	.....	19,960	Do.
Van Buren .....	4,860	.....	4,860	Productive; mountainous.
Washington .....	17,280	.....	17,280	Productive; timbered.
Total .....	301,820	.....	301,820	
Little Rock :				
Arkansas .....	240	.....	240	
Clay .....	160	.....	160	Broken, timbered.
Cleburne .....	10,960	.....	10,960	Mountainous, timbered.
Conway .....	2,840	.....	2,840	Do.
Crawford .....	8,800	.....	8,800	Do.
Desha .....	80	.....	80	Swampy, timbered.
Drew .....	120	.....	120	
Faulkner .....	2,520	.....	2,520	Broken, timbered.
Franklin .....	6,760	.....	6,760	Do.
Fulton .....	11,640	.....	11,640	Do.
Garland .....	1,280	.....	1,280	Do.
Grant .....	280	.....	280	Level, timbered.
Greene .....	120	.....	120	Broken, timbered.
Independence .....	8,440	.....	8,440	Do.
Izard .....	5,840	.....	5,840	Do.
Johnson .....	11,760	.....	11,760	Do.
Lawrence .....	1,040	.....	1,040	Do.
Lincoln .....	360	.....	360	Swampy, timbered.
Logan .....	9,840	.....	9,840	Do.
Monroe .....	180	.....	180	Do.
Montgomery .....	120	.....	120	
Perry .....	1,680	.....	1,680	Broken, timbered.
Pope .....	2,480	.....	2,480	
Pulaski .....	720	.....	720	Do.



VACANT PUBLIC LANDS—Continued.  
ARKANSAS—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
Little Rock—Cont.	Acres.	Acres.	Acres.	
Randolph .....	9,840	.....	9,840	Broken, timbered.
Saline .....	3,360	.....	3,360	Do.
Scott .....	7,600	.....	7,600	Do.
Sebastian .....	880	.....	880	Do.
Sharp .....	23,240	.....	23,240	Do.
Van Buren .....	10,640	.....	10,640	Do.
White .....	1,640	.....	1,640	Do.
Yell .....	4,760	.....	4,760	Do.
Total .....	150,220	.....	150,220	
State total...	515,455	.....	515,455	

CALIFORNIA.

Eureka :				Very rough, broken, and mountainous; timber, grazing, and mineral land.
Del Norte .....	7,235	.....	7,235	
Humboldt ....	106,190	18,623	124,813	Mountainous; grazing and timber land; some mineral.
Mendocino ....	19,339	.....	19,339	Mountainous; timber and grazing land.
Trinity .....	72,846	23,068	95,914	Mountainous; grazing timber, and mineral land.
Total .....	205,610	41,691	247,301	
Independence :				
Alpine .....	12,945	.....	12,945	Mountainous, grazing.
Inyo .....	2,560,715	1,205,823	3,766,538	Agricultural, mountainous.
Kern .....	574,914	98,041	672,955	Arid, mountainous, grazing.
Mono .....	597,788	41,990	638,778	Grazing, agricultural, mineral.
San Bernardino.	2,011,051	1,198,237	3,209,288	Arid, mineral, mountainous.
Total .....	5,757,413	2,544,091	8,301,504	
Los Angeles :				
Imperial .....	854,675	212,560	1,067,235	Level desert.
Kern .....	128,152	15,147	143,299	Arid, level desert, mountainous.
Los Angeles...	666,096	132,592	798,688	Do.
Orange .....	20,378	1,906	22,284	Mountainous and hilly.
Riverside .....	1,330,961	575,241	1,906,202	Mountainous, rolling, and level desert.
San Bernardino.	2,968,598	958,995	3,927,593	Do.
San Diego .....	114,837	336,839	451,676	Do.
Santa Barbara..	42,830	6,396	49,226	Mountainous and rolling.
Ventura .....	56,827	54,438	111,265	Do.
Total .....	6,183,354	2,294,114	8,477,468	
Redding :				
Modoc .....	10,026	21,205	31,231	Principally mountainous timberland.
Shasta .....	17,604	35,050	52,654	Farming, graz., timber, mineral.
Siskiyou .....	169,266	116,213	285,479	Do.
Tehama .....	40,340	10,031	50,371	Mostly foothill and graz. land.
Trinity .....	51,748	8,119	59,867	Mountainous, timber, grazing, mineral.
Total .....	288,984	190,618	479,602	
Sacramento :				
Amador .....	17,225	.....	17,225	Grazing, timber, mineral.
Butte .....	55,668	.....	55,668	Mountainous land; timbered.
Calaveras .....	79,106	.....	79,106	Grazing, timber, mineral.
Colusa .....	27,299	1,280	28,579	Agricultural and grazing.
Eldorado .....	42,430	1,540	43,970	Timber, grazing, and mineral.
Fresno .....	31,245	4,560	35,805	Mountain land.
Glenn .....	17,520	.....	17,520	Agricultural and grazing.
Lake .....	9,720	.....	9,720	Hilly; agricultural and grazing.
Madera .....	55,815	.....	55,815	Hilly; farming, graz., and mining.
Mariposa .....	109,834	.....	109,834	Mountainous; mining, graz., timb.
Merced .....	15,420	.....	15,420	Rolling foothills; farming and grazing.
Napa .....	26,920	.....	26,920	Hilly; mineral and grazing.
Nevada .....	47,613	.....	47,613	Mineral, timber.

## VACANT PUBLIC LANDS—Continued.

## CALIFORNIA—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
<b>Sacramento—Cont.</b>	<b>Acres.</b>	<b>Acres.</b>	<b>Acres.</b>	
Placer .....	26,515	1,540	28,055	Mineral, timber, and grazing.
Stanislaus .....	22,560	.....	22,560	Foothills; farming and grazing.
Tehama .....	23,960	720	24,680	Grazing and agricultural.
Tuolumne .....	52,315	1,600	53,915	Timber, grazing, mining.
Yolo .....	39,380	.....	39,380	Grazing and agricultural.
Yuba .....	26,600	.....	26,600	Agricultural, timber, and mineral.
<b>Total .....</b>	<b>727,145</b>	<b>11,240</b>	<b>738,385</b>	
<b>San Francisco:</b>				
Alameda .....	1,173	.....	1,173	Mountain land.
Fresno .....	70,581	2,560	73,141	Do.
Kern .....	6,686	14,447	21,133	Do.
Kings .....	1,955	.....	1,955	Do.
Lake .....	138,961	.....	138,961	Do.
Mendocino .....	330,879	51,927	382,806	Do.
Merced .....	50,961	.....	50,961	Do.
Monterey .....	901,086	3,994	905,080	Do.
Napa .....	76,289	11,520	87,809	Do.
San Benito .....	312,888	5,115	318,003	Do.
San Joaquin .....	20,164	.....	20,164	Do.
San Luis Obispo .....	608,764	.....	608,764	Do.
Santa Barbara .....	34,506	.....	34,506	Do.
Santa Clara .....	18,674	5,482	24,156	Do.
Solano .....	81,892	.....	81,892	Do.
Sonoma .....	71,602	12,228	83,830	Do.
Stanislaus .....	24,571	5,737	30,308	Do.
Tehama .....	81,852	800	82,652	Do.
Trinity .....	8,360	.....	8,360	Do.
Ventura .....	20,801	.....	20,801	Do.
<b>Total .....</b>	<b>2,862,645</b>	<b>113,810</b>	<b>2,976,455</b>	
<b>Susanville:</b>				
Lassen .....	1,405,938	46,006	1,451,944	Timber, desert, grazing and mineral.
Modoc .....	173,585	17,761	191,346	Timber, desert, grazing and farming.
Plumas .....	17,628	4,254	21,882	Mountainous, timber, mineral.
Sierra .....	40,660	.....	40,660	Timber, mountainous, and mineral.
<b>Total .....</b>	<b>1,637,811</b>	<b>68,021</b>	<b>1,705,832</b>	
<b>Visalia:</b>				
Fresno .....	137,605	11,480	149,085	Mountainous, grazing, timber.
Kern .....	112,624	24,128	136,752	Arid plains and mountainous.
Kings .....	33,757	.....	33,757	Do.
Merced .....	8,361	.....	8,361	Mountainous, grazing.
Monterey .....	2,400	.....	2,400	Do.
San Benito .....	9,066	.....	9,066	Do.
San Luis Obispo .....	29,955	.....	29,955	Do.
Tulare .....	16,173	50,868	67,041	Arid plains and mountainous; timber.
<b>Total .....</b>	<b>349,941</b>	<b>86,476</b>	<b>436,417</b>	
<b>State total...</b>	<b>18,012,903</b>	<b>5,350,061</b>	<b>23,362,964</b>	

## COLORADO.

<b>Del Norte:</b>				
Chaffee .....	3,081	.....	3,081	Mountainous, mineral.
Conejos .....	194,787	.....	194,787	Agricultural, farming, and mountainous.
Costilla .....	35,386	3,840	39,226	Mountainous, prairie, and farming.
Fremont .....	1,280	.....	1,280	Mountainous and farming.
Huerfano .....	8,017	3,840	11,857	Farming and mountainous.
Las Animas .....	.....	29,440	29,440	Mountainous.
Rio Grande .....	110,000	.....	110,000	Agricultural and mineral.
Saguache .....	321,219	.....	321,219	Do.
<b>Total .....</b>	<b>673,770</b>	<b>37,120</b>	<b>710,890</b>	



## VACANT PUBLIC LANDS—Continued.

## COLORADO—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
<b>Denver :</b>	Acres.	Acres.	Acres.	
Adams .....	15,360	.....	15,360	Agricultural and grazing.
Arapahoe .....	6,920	.....	6,920	Do.
Boulder .....	72,800	.....	72,800	Mountainous, mineral.
Clear Creek .....	22,680	61,091	83,771	Mountainous.
Douglas .....	5,020	.....	5,020	Arid; grazing, broken.
Eagle .....	23,480	.....	23,480	Mountainous, grazing, mineral.
Elbert .....	28,880	.....	28,800	Agricultural and grazing.
Gilpin .....	17,640	.....	17,640	Mountainous, grazing, mineral.
Grand .....	196,820	.....	196,820	Do.
Jackson .....	337,340	.....	337,340	Mountainous and grazing.
Jefferson .....	40,620	.....	40,620	Mountainous, grazing, mineral.
Larimer .....	362,640	.....	362,640	Do.
Morgan .....	38,960	.....	38,960	Grazing and agricultural.
Routt .....	.....	7,680	7,680	Mountainous, grazing, mineral.
Summit .....	7,880	.....	7,880	Do.
Weld .....	40,320	.....	40,320	Agricultural and grazing.
<b>Total .....</b>	<b>1,217,360</b>	<b>68,771</b>	<b>1,286,131</b>	
<b>Durango :</b>				
Archuleta .....	160,240	.....	160,240	Agricultural, timber, grazing.
Dolores .....	185,547	88,160	273,707	Mountainous, agricultural, and mineral.
La Plata .....	273,068	.....	273,068	Grazing, agricultural, and mineral.
Montezuma .....	436,403	.....	436,403	Do.
<b>Total .....</b>	<b>1,055,258</b>	<b>88,160</b>	<b>1,143,418</b>	
<b>Glenwood Springs :</b>				
Eagle .....	297,032	.....	297,032	Grazing and mineral.
Garfield .....	861,293	139,793	1,001,086	Farming, grazing, mineral.
Mesa .....	117,975	.....	117,975	Farming, grazing.
Moffatt .....	2,104,600	193,443	2,298,043	Farming, grazing, mineral.
Pitkin .....	89,646	19,200	108,846	Grazing and mineral.
Rio Blanco .....	1,434,175	.....	1,434,175	Farming and grazing.
Routt .....	335,047	.....	335,047	Farming, grazing, mineral.
<b>Total .....</b>	<b>5,239,768</b>	<b>352,436</b>	<b>5,592,204</b>	
<b>Hugo :</b>				
Cheyenne .....	20,320	.....	20,320	Land in this district is grazing, farming, and arid.
Kit Carson .....	33,910	.....	33,910	
Lincoln .....	24,880	.....	24,880	
<b>Total .....</b>	<b>79,110</b>	.....	<b>79,110</b>	
<b>Lamar :</b>				
Baca .....	757,851	.....	757,851	Undulating prairie, grazing, and farming.
Bent .....	393,755	.....	393,755	Undulating prairie and valley land.
Cheyenne .....	17,166	.....	17,166	Prairie, grazing land.
Kiowa .....	43,872	.....	43,872	Undulating prairie, grazing.
Las Animas .....	290,582	.....	290,582	Broken, hilly, grazing land.
Lincoln .....	3,118	.....	3,118	Level prairie, grazing land.
Prowers .....	270,697	.....	270,697	Prairie and valley farming land.
<b>Total .....</b>	<b>1,777,041</b>	.....	<b>1,777,041</b>	
<b>Leadville :</b>				
Chaffee .....	94,605	.....	94,605	Mineral and mountainous.
Fremont .....	16,039	23,877	39,916	Grazing.
Lake .....	10,237	.....	10,237	Mineral, mountainous.
Park .....	389,097	.....	389,097	Mineral and agricultural.
Summit .....	1,887	.....	1,887	Mineral, mountainous.
Teller .....	10,458	.....	10,458	Grazing.
<b>Total .....</b>	<b>522,323</b>	<b>23,877</b>	<b>546,200</b>	
<b>Montrose :</b>				
Delta .....	301,525	56,963	358,488	Mountainous, coal, grazing lands.
Dolores .....	42,060	34,320	76,380	Mineral, grazing, arid.
Gunnison .....	962,401	397,157	1,359,558	Mountainous, coal, mineral, farming, grazing.
Hinsdale .....	239,073	42,212	281,285	Mountainous, mineral, timber, coal, grazing.

## VACANT PUBLIC LANDS—Continued.

## COLORADO—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
Montrose—Cont.	Acres.	Acres.	Acres.	
Mesa .....	752,672	222,842	975,514	Coal, farming, mineral, grazing.
Montrose .....	391,956	146,105	538,061	Do.
Ouray .....	257,917	.....	257,917	Agricultural, grazing, mineral, mountainous.
Saguache .....	350,062	.....	350,062	Farming, grazing, mineral, timber.
San Miguel ..	565,487	58,753	624,240	Agricultural, rich mineral, grazing, coal.
Total .....	3,863,153	958,352	4,821,505	
Pueblo:				
Bent .....	61,778	.....	61,778	Agricultural and grazing.
Costilla .....	10,711	.....	10,711	Mountainous.
Custer .....	132,822	.....	132,822	Mountainous and grazing.
Elbert .....	1,827	.....	1,827	Agricultural and grazing.
El Paso .....	110,227	760	110,987	One-third mountainous; two-thirds agricultural and grazing.
Fremont .....	551,660	.....	551,660	Two-thirds mountainous; one-third agricultural and grazing.
Huerfano .....	269,705	.....	269,705	One-third mountainous; two-thirds agricultural and grazing.
Kiowa .....	27,280	.....	27,280	Grazing.
Las Animas ...	1,500,880	.....	1,500,880	One-third mountainous; two-thirds agricultural.
Lincoln .....	190,763	.....	190,763	Grazing.
Otero .....	493,851	.....	493,851	Agricultural and grazing.
Pueblo .....	386,132	.....	386,132	Three-fourths agricultural; one-fourth mountainous.
Saguache .....	20,086	.....	20,086	Mountainous.
Teller .....	52,018	.....	52,018	Mountainous; largely mineral.
Total .....	3,809,740	760	3,810,500	
Sterling:				
Logan .....	117,200	.....	117,200	Agricultural and grazing.
Morgan .....	95,860	.....	95,860	Do.
Phillips .....	15,600	.....	15,600	Do.
Sedgwick .....	5,600	.....	5,600	Do.
Washington ...	269,136	.....	269,136	Do.
Weld .....	108,451	.....	108,451	Do.
Yuma .....	220,254	.....	220,254	Do.
Total .....	832,101	.....	832,101	
State total...	19,069,624	1,529,476	20,599,100	

## FLORIDA.

[The greater part of the land in the State is level and timbered, and there are no mountains. There are some large swamps and marshes in the southern part of the state.]

Gainesville:				
Alachua .....	4,940	.....	4,940	Low pine land.
Baker .....	1,060	.....	1,060	Do.
Bradford .....	1,426	.....	1,426	Do.
Brevard .....	15,775	15,648	31,423	Low pine and swamp land.
Calhoun .....	6,180	.....	6,180	Low pine land.
Citrus .....	3,440	.....	3,440	Do.
Clay .....	7,089	.....	7,089	Do.
Columbia .....	921	.....	921	Do.
Dade .....	1,600	15,820	17,420	Do.
De Soto .....	79,998	.....	79,998	Do.
Duval .....	207	1,200	1,407	Do.
Escambia .....	2,071	.....	2,071	Do.
Gadsden .....	535	.....	535	Do.
Hamilton .....	459	.....	459	Do.
Hernando .....	1,360	.....	1,360	Do.
Hillsboro .....	1,114	.....	1,114	Low pine and swamp land.
Holmes .....	198	.....	198	Low pine land.
Jackson .....	427	.....	427	Do.



VACANT PUBLIC LANDS—Continued.  
FLORIDA—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
<b>Gainesville—Cont.</b>	<b>Acres.</b>	<b>Acres.</b>	<b>Acres.</b>	
Jefferson .....	10	.....	10	Low pine land.
Lafayette .....	9,624	.....	9,624	Low pine and swamp land.
Lake .....	29,200	.....	29,200	Low pine land.
Lee .....	30,968	12,800	43,768	Low pine and swamp land.
Leon .....	240	.....	240	Low pine land.
Levy .....	4,960	.....	4,960	Do.
Liberty .....	1,147	.....	1,147	Do.
Madison .....	720	.....	720	Do.
Menatee .....	4,719	.....	4,719	Do.
Marion .....	11,126	.....	11,126	Do.
Monroe .....	2,771	.....	2,771	Low pine and swamp land.
Nassau .....	575	.....	575	Low pine land.
Orange .....	11,137	8,320	19,457	Do.
Osceola .....	3,760	2,408	6,168	Do.
Palm Beach...	5,559	8,020	13,579	Flat pine land.
Pasco .....	600	.....	600	Low pine land.
Polk .....	9,711	.....	9,711	Do.
Putnam .....	4,080	.....	4,080	Do.
St. John .....	7,996	.....	7,996	Do.
St. Lucie .....	3,249	78,235	81,484	Do.
Santa Rosa...	2,118	.....	2,118	Do.
Sumter .....	800	.....	800	Do.
Suwanee .....	600	.....	600	Do.
Taylor .....	2,880	.....	2,880	Do.
Volusia .....	15,495	13,080	28,575	Do.
Wakulla .....	560	.....	560	Do.
Walton .....	6,880	.....	6,880	Do.
Washington ..	21,253	.....	21,253	Do.
State total..	321,638	155,531	477,169	

IDAHO.

<b>Blackfoot :</b>				
Bannock .....	348,676	260,088	608,764	Mountainous and agricultural lands.
Bear Lake.....	56,000	197,228	253,228	Do.
Bingham .....	203,112	516,350	719,462	Do.
Blaine .....	11,970	.....	11,970	Do.
Bonneville .....	200,400	576,431	776,831	Do.
Fremont .....	652,604	1,200,249	1,852,853	Do.
Lemhi .....	.....	29,000	29,000	Do.
Oneida .....	167,120	478,315	645,435	Do.
Total .....	1,639,882	3,257,661	4,897,543	
<b>Boise :</b>				
Ada .....	78,837	228,496	307,333	Arid mountainous, timbered.
Boise .....	149,770	113,482	263,252	Mountainous, timbered, mineral, grazing.
Canyon .....	142,411	5,631	148,042	Arid and grazing.
Elmore .....	235,555	73,611	309,166	Arid mountainous, mineral.
Idaho .....	15,399	619,995	635,394	Mountainous, mineral timber.
Owyhee .....	574,537	2,684,980	3,259,517	Arid, mountainous, mineral, grazing.
Washington ...	396,040	93,655	489,695	Arid, mountainous, timber, mineral.
Total .....	1,592,549	3,819,850	5,412,399	
<b>Coeur d'Alene :</b>				
Bonner .....	26,527	8,000	34,527	Agricultural and timbered.
Kootenai .....	105,818	12,998	118,816	Do.
Shoshone .....	33,919	48,530	82,449	Agricultural, timbered, mineral.
Total .....	166,264	69,528	235,792	
<b>Halley :</b>				
Bingham .....	15,458	54,400	69,858	Lava and sagebrush plains.
Blaine .....	618,614	2,375,176	2,993,790	Mountainous, grazing, sagebrush plains.
Boise .....	.....	112,500	112,500	Mountainous and grazing.
Cassia .....	543,610	774,787	1,318,397	Grazing, sagebrush plains.
Custer .....	101,200	2,373,780	2,474,980	Mountainous, grazing.
Elmore .....	165,703	293,760	459,463	Do.
Fremont .....	37,271	33,880	71,151	Lava and sagebrush plains.

## VACANT PUBLIC LANDS—Continued.

## IDAHO—Continued.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
Halley—Cont.	Acres.	Acres.	Acres:	
Idaho .....	23,569	1,000,960	1,024,529	Mountainous, grazing.
Lemhi .....	287,980	2,385,650	2,673,630	Mountainous and arid prairie.
Lincoln .....	433,720	662,180	1,095,900	Lava and sagebrush plains.
Owyhee .....	111,250	353,680	464,930	Do.
Twin Falls....	273,910	311,367	585,277	Do.
Total .....	2,612,285	10,732,120	13,344,405	
Lewiston:				
Clearwater ...	28,947	.....	28,947	Mountainous.
Idaho .....	93,271	27,200	120,471	Mountainous, timbered, agricul-tural.
Latah .....	1,380	640	2,020	Do.
Lewis .....	5,950	25,050	31,000	Mountainous.
Nez Perces....	39,804	10,656	50,460	Do.
Total .....	169,352	63,546	232,898	
State total..	6,180,332	17,942,705	24,123,037	

## KANSAS.

Dodge City:				
Barber .....	240	.....	240	Broken.
Clark .....	2,195	.....	2,195	Broken, sandy.
Edwards .....	425	.....	425	Do.
Finney .....	2,357	.....	2,357	Do.
Grant .....	2,080	.....	2,080	Grazing.
Greeley .....	1,660	.....	1,660	Agricultural.
Hamilton .....	4,345	.....	4,345	Part grazing, part broken and sandy.
Haskell .....	160	.....	160	Grazing.
Hodgeman ....	120	.....	120	Rough, grazing.
Kearney .....	1,119	.....	1,119	Part grazing, part broken and sandy.
Kiowa .....	356	.....	356	Rough, sandy.
Lane .....	1,720	.....	1,720	Agricultural.
Meade .....	9,862	.....	9,862	Grazing.
Morton .....	29,993	.....	29,993	Do.
Ness .....	80	.....	80	Rough, grazing.
Scott .....	1,280	.....	1,280	Agricultural.
Seward .....	9,491	.....	9,491	Grazing, part broken and sandy.
Stafford .....	320	.....	320	Sandy.
Stanton .....	5,592	.....	5,592	Grazing.
Stevens .....	3,601	.....	3,601	Do.
Wichita .....	160	.....	160	Do.
Total .....	77,156	.....	77,156	
Topeka:				
Cheyenne .....	18,840	.....	18,840	Farming, grazing.
Gove .....	2,726	.....	2,726	Agricultural.
Logan .....	4,080	.....	4,080	Do.
Rawlins .....	1,800	.....	1,800	Farming, grazing.
Sherman .....	320	.....	320	Do.
Trego .....	160	.....	160	Agricultural.
Wallace .....	3,320	.....	3,320	Do.
Total .....	31,246	.....	31,246	
State total..	108,402	.....	108,402	



## VACANT PUBLIC LANDS—Continued.

## LOUISIANA.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
Baton Rouge:	Acres.	Acres.	Acres.	
Acadia .....	104	.....	104	Prairie.
Ascension .....	1,363	.....	1,363	Swampy.
Assumption .....	155	.....	155	Do.
Avoyelles .....	1,142	.....	1,142	Prairie and pine woods.
Blenville .....	4,095	.....	4,095	High pine woods.
Bossier .....	5,721	.....	5,721	Do.
Caddo .....	8,829	.....	8,829	Do.
Calcasieu .....	3,303	.....	3,303	Prairie and pine woods.
Caldwell .....	3,979	.....	3,979	High pine woods.
Catahoula .....	3,624	.....	3,624	Pine woods.
Claiborne .....	5,516	.....	5,516	High pine woods.
De Soto .....	1,440	.....	1,440	Do.
East Baton Rouge .....	53	.....	53	Pine lands.
East Carroll .....	40	.....	40	Low pine woods.
East Feliciana .....	210	.....	210	Pine woods.
Franklin .....	100	.....	100	Pine woods, hilly.
Grant .....	427	.....	427	Pine woods.
Iberia .....	820	.....	820	Agricultural.
Jackson .....	959	.....	959	Pine woods, hilly.
Jefferson .....	1,256	.....	1,256	Low, swampy.
Lafourche .....	137	.....	137	Agricultural.
Lafayette .....	7	.....	7	Pine woods.
Lincoln .....	160	.....	160	Do.
Livingston .....	169	.....	169	Hardwoods.
Morehouse .....	260	.....	260	Pine woods.
Natchitoches .....	2,940	.....	2,940	Do.
Ouachita .....	932	.....	932	Do.
Plaquemines .....	3,228	.....	3,228	Ordinary farming and pine land.
Pointe Coupee .....	159	.....	159	Do.
Rapides .....	375	.....	375	Pine woods and agricultural.
Red River .....	65	.....	65	Pine woods.
Richland .....	563	.....	563	Do.
Sabine .....	822	.....	822	Do.
St. Bernard .....	4,600	.....	4,600	Farming and swampy.
St. Charles .....	2,384	.....	2,384	Do.
St. Helena .....	49	.....	49	Pine woods.
St. Landry .....	1,482	.....	1,482	Prairie and pine woods.
St. Martin .....	412	.....	412	Prairie land.
St. Mary .....	161	.....	161	Do.
St. Tammany .....	29	.....	29	Pine woods.
Tangipahoa .....	117	.....	117	Do.
Tensas .....	78	.....	78	Alluvial soil.
Terrebonne .....	476	.....	476	Low, swampy.
Union .....	930	.....	930	Pine woods and agricultural.
Vermilion .....	1,815	.....	1,815	Prairie land.
Vernon .....	2,138	.....	2,138	Pine woods.
Washington .....	22	.....	22	Pine woods and alluvial soil.
Webster .....	2,320	.....	2,320	Pine woods.
West Carroll .....	40	.....	40	Pine woods and alluvial soil.
West Feliciana .....	446	.....	446	Do.
Winn .....	561	.....	561	Do.
State total...	70,313	.....	70,313	

## MICHIGAN.

Marquette:				
Alcona .....	2,342	.....	2,342	Light soil.
Alger .....	2,157	.....	2,157	Fair farming land.
Alpena .....	1,280	.....	1,280	Do.
Antrim .....	134	.....	134	Do.
Baraga .....	4,426	.....	4,426	Timbered farming land.
Benzle .....	920	.....	920	Good farming land.
Charlevoix .....	3,770	.....	3,770	Fair farming land.
Cheboygan .....	827	.....	827	Do.
Chippewa .....	16,601	.....	16,601	Timbered farming land.
Clare .....	2,257	.....	2,257	Fair farming land.
Delta .....	9,241	.....	9,241	Timbered farming land.
Dickinson .....	1,772	.....	1,772	Do.
Emmet .....	102	.....	102	Light farming land.
Gladwin .....	320	.....	320	Do.

VACANT PUBLIC LANDS—Continued.  
MICHIGAN—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
	Acres.	Acres.	Acres.	
Marquette—Con.				
Grand Traverse	379	379	379	Good farming land.
Houghton	331	331	331	Timbered farming land.
Iosco	872	872	872	Light farming land.
Iron	1,042	1,042	1,042	Timbered; sandy loam.
Kalkaska	3,028	3,028	3,028	Light soil; some timber.
Keweenaw	10,951	10,951	10,951	Do.
Lake	200	200	200	Very light soil.
Leelenau	1,047	1,047	1,047	Good farming land.
Luce	4,642	4,642	4,642	Fair farming land; some timber.
Mackinac	3,144	3,144	3,144	Do.
Manistee	425	425	425	Fair farming land.
Marquette	10,139	10,139	10,139	Timbered farming land.
Mason	439	439	439	Fair farming land.
Mecosta	38	38	38	Third-rate farming land.
Menominee	605	605	605	Timbered farming land.
Missaukee	1,917	1,917	1,917	Good farming land.
Montmorency	717	717	717	Fair farming land.
Muskegon	80	80	80	Good farming land.
Newaygo	120	120	120	Fair farming land.
Oceana	846	846	846	Good farming land.
Ogemaw	400	400	400	Do.
Ontonagon	582	582	582	Timbered farming land.
Oscoda	1,302	1,302	1,302	Mostly light soil.
Otsego	280	280	280	Good farming land.
Presque Isle	360	360	360	Fair farming land.
Schoolcraft	15,970	15,970	15,970	Fair farming land; some timber.
Wexford	125	125	125	Good farming land.
State total..	105,130	105,130	105,130	

MINNESOTA.

Cass Lake :				
Beltrami	284,280	284,280	284,280	Timbered agricultural; swampy.
Cass	5,540	5,540	5,540	Timber, brush, and swamp.
Hubbard	760	760	760	Timber and prairie.
Itasca	6,020	6,020	6,020	Timbered agricultural; swampy.
Koochiching	203,100	45,965	249,065	Do.
Total	499,700	45,965	545,665	
Crookston :				
Beltrami	750,946	750,946	750,946	Brush and timber; some swamp.
Clearwater	5,305	5,305	5,305	Brush, timber, and swamp.
Kittson	560	560	560	Good land; some swamp.
Marshall	41,788	41,788	41,788	Do.
Pennington	27,200	27,200	27,200	Reclaimed swamps.
Red Lake	454	454	454	Level low; some swamp.
Roseau	173,434	173,434	173,434	Brush land; some swamp.
Total	999,687		999,687	
Duluth :				
Aitkin	1,400	1,400	1,400	Agricultural and timber.
Carlton	920	920	920	Do.
Cass	1,240	1,240	1,240	Timber, brush, and swamp.
Cook	132,950	132,950	132,950	Timber, iron, nickel; light soil.
Crow Wing	320	320	320	Timber, brush, and swamp.
Hubbard	120	120	120	Broken and rough.
Itasca	4,800	4,800	4,800	Largely timber; gold in north, with light soil; agricultural in south; iron belt in center, running east and west.
Kanabec	120	120	120	Sandy and brush.
Koochiching	4,000	4,000	4,000	Agricultural, timber.
Lake	39,400	39,400	39,400	Timber; light soil; iron.
Morrison	350	350	350	Brush and sandy.
Pine	460	460	460	Broken.
Pope	40	40	40	Wet.
St. Louis	73,400	73,400	73,400	Iron, timber, and agricultural.
Wadena	120	120	120	Brush.
Total	259,640		259,640	
State total..	1,759,027	45,965	1,804,992	



VACANT PUBLIC LANDS—Continued.  
MISSISSIPPI.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
	Acres.	Acres.	Acres.	
Jackson :				
Adams .....	240	.....	240	Agricultural and timber lands.
Amite .....	40	.....	40	Do.
Attala .....	2,660	.....	2,660	Do.
Carroll .....	2,040	.....	2,040	Good agricultural land.
Choctaw .....	1,400	.....	1,400	Agricultural and timber lands.
Clarke .....	1,000	.....	1,000	Do.
Copiah .....	360	.....	360	Do.
Forest .....	480	.....	480	Pine woods farming land.
Franklin .....	680	.....	680	Agricultural and timber lands.
George .....	3,040	.....	3,040	In pine belt, mostly level.
Greene .....	5,100	.....	5,100	Agricultural and timber lands.
Grenada .....	1,300	.....	1,000	Do.
Hancock .....	800	.....	800	Do.
Harrison .....	440	.....	440	Do.
Horn Island..	3,980	.....	3,980	Flat surface, sandy soil.
Hinds .....	80	.....	80	Good farm land, somewhat hilly.
Jackson .....	2,760	.....	2,760	Agricultural and timber lands.
Jasper .....	240	.....	240	Farming land, somewhat broken.
Jefferson .....	200	.....	200	Do.
Jones .....	240	.....	240	Do.
Kemper .....	480	.....	480	Do.
Lamar .....	80	.....	80	In pine belt. Farming land.
Lauderdale ..	1,080	.....	1,080	Do.
Lawrence .....	120	.....	120	Broken, good timber and farm land.
Leake .....	960	.....	960	Agricultural and timber land.
Leflore .....	720	.....	720	Broken timber and farm land.
Lincoln .....	280	.....	280	Hilly ; good farming land.
Marion .....	280	.....	280	Level ; farm and grazing lands.
Monroe .....	3,940	.....	3,940	Agricultural and timber lands.
Montgomery ..	1,320	.....	1,320	Do.
Neshoba .....	2,120	.....	2,120	Do.
Newton .....	280	.....	280	Broken ; good farming land.
Noxubee .....	320	.....	320	Agricultural and timber lands.
Oktibeha .....	360	.....	360	Generally level farming and grazing land.
Pearl River....	280	.....	280	Generally level pine-woods land.
Perry .....	1,040	.....	1,040	Agricultural and timber lands.
Smith .....	400	.....	400	Generally level farming and grazing land.
Tallahatchie ..	320	.....	320	Agricultural and timber lands.
Warren .....	520	.....	520	Very hilly. Away from river.
Wayne .....	4,360	.....	4,360	Agricultural and timber land.
Webster .....	2,500	.....	2,500	Do.
Wilkinson .....	2,440	.....	2,440	Do.
Winston .....	1,540	.....	1,540	Do.
Yalobusha .....	320	.....	320	Swampy ; good farming land.
Yazoo .....	120	.....	120	
State total..	51,960	.....	51,960	

MISSOURI.

Springfield :				
Barry .....	36	.....	36	Broken timber land.
Camden .....	40	.....	40	Timbered land.
Douglas .....	80	.....	80	Hilly.
Hickory .....	80	.....	80	Broken timber land.
Iron .....	120	.....	120	Timbered ; hilly.
McDonald .....	82	.....	82	Broken timber land.
Madison .....	80	.....	80	Timbered ; hilly.
Oregon .....	80	.....	80	Broken.
Ozark .....	40	.....	40	Timbered ; hills and valleys.
Phelps .....	40	.....	40	Broken.
Pulaski .....	184	.....	184	
Reynolds .....	40	.....	40	
Shannon .....	208	.....	208	Hilly and timbered.
Ste. Genevieve.	40	.....	40	
Taney .....	120	.....	120	Timber lands, hills, and valleys.
Texas .....	40	.....	40	Hilly farm land.
Washington ..	40	.....	40	
Webster .....	53	.....	53	
Wright .....	40	.....	40	
State total..	1,483	.....	1,483	

## VACANT PUBLIC LANDS—Continued.

## MONTANA.

Land district and county.	Area unappropriated and unreserved.			Brief description of character of unappropriated and unreserved land.
	Surveyed.	Unsurveyed.	Total.	
<b>Billings:</b>	Acres.	Acres.	Acres.	
Carbon .....	336,090	69,120	405,210	The general character of these lands is grazing, dry farming, timber, and stone and coal.
Musselshell .....	73,019	806	73,825	
Rosebud .....	397,602	165,120	562,722	
Yellowstone .....	459,351	460,800	920,151	
<b>Total .....</b>	<b>1,266,062</b>	<b>695,846</b>	<b>1,961,908</b>	
<b>Bozeman:</b>				
Broadwater .....	24,313	12,160	36,473	Principally arid.
Carbon .....	102,316	10,880	113,196	One-third good farming land ;
				two-thirds mountainous.
Gallatin .....	48,507	11,139	59,646	One-fourth good farm land; three-fourths mountainous.
Jefferson .....	39,646	8,723	48,369	Principally arid.
Madison .....	137,770	112,682	250,452	One-fourth arid; three-fourths mountainous.
Park .....	92,499	1,742	94,241	One-third good farm land; two-thirds arid and mountainous.
Sweet Grass...	382,802	.....	382,802	Grazing and mountainous.
Yellowstone .....	33,341	.....	33,341	Arid and mountainous.
<b>Total .....</b>	<b>861,194</b>	<b>157,326</b>	<b>1,018,520</b>	
<b>Glasgow:</b>				
Dawson .....	168,900	1,102,651	1,271,551	Grazing and farming.
Valley .....	2,366,735	2,746,287	5,113,022	Agricultural and grazing.
<b>Total .....</b>	<b>2,535,635</b>	<b>3,848,938</b>	<b>6,384,573</b>	
<b>Great Falls:</b>				
Cascade .....	92,980	69,060	162,040	Grazing and agricultural.
Chouteau .....	443,520	12,960	456,480	Do.
Fergus .....	1,640	15,360	17,000	Broken, grazing land.
Lewis & Clarke.	22,688	26,240	48,928	Mountainous and agricultural.
Teton .....	643,200	72,603	715,803	Agricultural and grazing.
<b>Total .....</b>	<b>1,204,028</b>	<b>106,223</b>	<b>1,400,251</b>	
<b>Hayre:</b>				
Chouteau .....	1,692,680	2,009,305	3,701,985	Mountainous, grazing, and agricultural.
<b>Helena:</b>				
Beaverhead .....	286,536	224,701	511,237	Mountainous and grazing.
Broadwater .....	97,402	87,785	185,187	Mountainous and agricultural.
Cascade .....	13,682	14,133	27,815	Grazing and agricultural.
Deerlodge .....	43,102	18,809	61,911	Mountainous, some agricultural.
Gallatin .....	6,728	.....	6,728	Mountainous.
Granite .....	85,530	61,709	147,239	Do.
Jefferson .....	2,259	180,835	183,094	Mountainous, grazing, and agricultural.
Lewis & Clarke.	837,377	108,333	946,710	Do.
Madison .....	348,944	617,468	966,412	Do.
Meagher .....	274,137	70,030	344,167	Do.
Park .....	6,336	20,424	26,760	Do.
Powell .....	124,566	225,900	350,466	Mountainous, some agricultural.
Silverbow .....	90,419	16,299	106,718	Do.
Sweet Grass...	9,067	.....	9,067	Do.
Teton .....	34,732	75,038	109,770	Do.
<b>Total .....</b>	<b>2,261,817</b>	<b>1,721,464</b>	<b>3,983,281</b>	
<b>Kalispell:</b>				
Flathead .....	133,252	960	134,212	Valleys, mountainous, timber, grazing.
Lincoln .....	3,785	.....	3,785	Mountainous, timberland.
Sanders .....	49,788	.....	49,788	Agricultural, timber, valleys, and mountainous.
<b>Total .....</b>	<b>186,825</b>	<b>960</b>	<b>187,785</b>	



## VACANT PUBLIC LANDS—Continued.

## MONTANA—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
<b>Lewistown :</b>	Acres.	Acres.	Acres.	
Chouteau .....	79,608	17,234	96,842	Broken, grazing.
Dawson .....	210,661	319,500	530,161	Do.
Fergus .....	910,203	1,012,000	1,922,203	Grazing, farming, timber, and mountainous.
Meagher .....	27,607	31,140	58,747	Farming and grazing.
Musselshell .....	309,741	56,750	366,491	Do.
Rosebud .....	13,760	130,450	144,210	Broken, grazing.
Sweet Grass...	40,494	.....	40,494	Farming and grazing.
<b>Total .....</b>	<b>1,592,074</b>	<b>1,567,074</b>	<b>3,159,148</b>	
<b>Miles City :</b>				
Custer .....	1,636,002	2,339,395	3,975,397	Grazing and agricultural.
Dawson .....	890,502	2,252,059	3,142,561	Do.
Rosebud .....	1,001,799	416,242	1,418,041	Do.
<b>Total .....</b>	<b>3,528,303</b>	<b>5,007,696</b>	<b>8,535,999</b>	
<b>Missoula :</b>				
Beaverhead ...	2,608	60,014	62,622	Arid and grazing.
Granite .....	26,808	13,365	41,173	Mountainous, timber, mineral.
Missoula .....	95,709	1,333,538	1,429,247	Small valleys, mountains, timber, mineral.
Powell .....	9,671	19,320	28,991	Mountains, timber, graz., min'ral.
Ravalli .....	1,357	97,654	99,011	Do.
Sanders .....	18,947	18,205	37,152	Agricultural, timber, mineral, mountainous.
<b>Total .....</b>	<b>155,100</b>	<b>1,542,096</b>	<b>1,697,196</b>	
<b>State total..</b>	<b>15,283,718</b>	<b>16,746,928</b>	<b>32,030,646</b>	

## NEBRASKA.

<b>Alliance :</b>				
Banner .....	9,960	.....	9,960	High table-land, hilly.
Boxbutte .....	7,320	.....	7,320	Level prairie.
Dawes .....	9,280	.....	9,280	Table and broken timber.
Garden .....	145,160	.....	145,160	Grazing.
Morrill .....	57,640	.....	57,640	Sand hills.
Scotts Bluff...	55,220	.....	55,220	Prairie and sandy.
Sheridan .....	76,800	.....	76,800	Prairie, table and sand hills.
Sioux .....	57,180	.....	57,180	Sandy and rough timber.
<b>Total .....</b>	<b>418,560</b>	.....	<b>418,560</b>	
<b>Brokenbow :</b>				
Blaine .....	17,160	.....	17,160	Grazing, sandy.
Brown .....	6,760	.....	6,760	Do.
Cherry .....	90,080	.....	90,080	Do.
Custer .....	1,160	.....	1,160	Do.
Grant .....	44,930	.....	44,930	Do.
Hooker .....	76,960	.....	76,960	Do.
Logan .....	21,560	.....	21,560	Do.
McPherson ...	58,946	.....	58,946	Do.
Thomas .....	76,800	.....	76,800	Do.
<b>Total .....</b>	<b>394,356</b>	.....	<b>394,356</b>	
<b>Lincoln :</b>				
Chase .....	4,440	.....	4,440	Broken and sandy ; grazing land.
Dundy .....	2,167	.....	2,167	Do.
Frontier .....	240	.....	240	Sandy and grazing.
Hall .....	37	.....	37	Sandy river bottom land.
Hayes .....	2,040	.....	2,040	Broken and grazing lands.
Hitchcock .....	720	.....	720	Rough and sandy ; grazing land.
Howard .....	48	.....	48	Sandy river bottom land.
Redwillow ....	160	.....	160	Broken and grazing land.
<b>Total .....</b>	<b>9,880</b>	.....	<b>9,880</b>	

## VACANT PUBLIC LANDS—Continued.

## NEBRASKA—Continued.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
<b>North Platte:</b>	Acres.	Acres.	Acres.	
Banner .....	280	.....	280	Grazing.
Cheyenne .....	553	.....	553	Do.
Deuel .....	167	.....	167	Broken, grazing.
Garden .....	6,568	.....	6,568	Grazing.
Keith .....	2,121	.....	2,121	Do.
Kimball .....	1,462	.....	1,462	Do.
Lincoln .....	4,235	.....	4,235	Broken and grazing.
Logan .....	959	.....	959	Grazing, broken and sandy.
McPherson .....	9,456	.....	9,456	Grazing and sandy.
Morrill .....	1,615	.....	1,615	Grazing.
Perkins .....	309	.....	309	Grazing and sandy.
<b>Total .....</b>	<b>27,725</b>	<b>.....</b>	<b>27,725</b>	
<b>O'Neill:</b>				
Boone .....	760	.....	760	Sandy, grazing.
Boyd .....	496	.....	496	Rough land.
Burt .....	60	.....	60	Sandy, grazing.
Cumming .....	34	.....	34	Do.
Douglas .....	2	.....	2	Do.
Garfield .....	2,800	.....	2,800	Sandy and broken.
Holt .....	5,320	.....	5,320	Do.
Keyapaha .....	152	.....	152	Broken.
Knox .....	197	.....	197	Do.
Loup .....	11,840	.....	11,840	Sandy and broken.
Madison .....	40	.....	40	Sandy, rolling, grazing land.
Rock .....	680	.....	680	Sandy.
Wheeler .....	1,740	.....	1,740	Sandy, grazing.
<b>Total .....</b>	<b>24,121</b>	<b>.....</b>	<b>24,121</b>	
<b>Valentine:</b>				
Brown .....	19,428	.....	19,428	Rough, grazing, and small valleys.
Cherry .....	435,349	.....	435,349	Do.
Keyapaha .....	960	.....	960	Do.
Rock .....	6,120	.....	6,120	Do.
<b>Total .....</b>	<b>461,857</b>	<b>.....</b>	<b>461,857</b>	
<b>State total...</b>	<b>1,336,499</b>	<b>.....</b>	<b>1,336,499</b>	

## NEVADA.

<b>Carson City:</b>				
Churchill .....	1,346,064	1,501,823	2,847,887	Mountainous, arid grazing land, little timber.
Clarke .....	3,170,069	1,178,150	4,348,219	Do.
Douglas .....	181,861	14,340	196,201	Do.
Elko .....	6,102,893	794,764	6,897,657	Do.
Esmeralda .....	1,052,845	906,625	1,959,470	Do.
Eureka .....	914,719	1,220,884	2,135,603	Mountainous, arid grazing land, no timber.
Humboldt .....	3,072,508	4,825,632	7,898,140	Do.
Lander .....	1,207,885	1,720,771	2,928,656	Do.
Lincoln .....	2,252,490	4,463,480	6,715,970	Do.
Lyon .....	339,873	296,396	636,269	Do.
Mineral .....	1,189,624	717,762	1,907,386	Mountainous, arid, little timber.
Nye .....	3,616,223	5,494,528	9,110,751	Mountainous arid grazing land, little timber.
Ormsby .....	26,886	19,980	46,866	Mountainous, arid grazing land, second growth.
Storey .....	55,972	45,132	101,104	Mountainous, arid grazing land, no timber.
Washoe .....	1,862,702	1,119,732	2,982,434	Mountainous, arid grazing land, second growth.
White Pine....	2,532,157	1,738,378	4,270,535	Mountainous, arid grazing land, little timber.
<b>State total...</b>	<b>28,924,771</b>	<b>26,058,377</b>	<b>54,983,148</b>	



## VACANT PUBLIC LANDS—Continued.

## NEW MEXICO.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
	Acres.	Acres.	Acres.	
Clayton :				
Colfax .....	148,160	.....	148,160	Arid, broken, and grazing.
Mora .....	73,600	.....	73,600	Grazing mostly, some broken.
San Miguel.....	31,200	.....	31,200	Grazing.
Union .....	929,280	.....	929,280	Grazing and broken.
Quay .....	16,960	.....	16,960	Grazing.
Total .....	1,199,200	.....	1,199,200	
Fort Sumner :				
Chaves .....	815,016	.....	815,016	Broken and grazing.
Curry .....	27,559	.....	27,559	Grazing.
Guadalupe .....	421,780	.....	421,780	Broken and grazing.
Lincoln .....	543,440	.....	543,440	Grazing.
Roosevelt .....	194,120	2,280	196,400	Broken and grazing.
Total .....	2,001,915	2,280	2,004,195	
Las Cruces :				
Dona Ana.....	1,711,851	230,400	1,942,251	Grazing, mountainous.
Grant .....	1,238,950	1,669,490	2,908,440	Mountainous, some plains for grazing.
Luna .....	1,069,165	472,240	1,541,405	Grazing lands.
Otero .....	1,056,878	581,628	1,638,506	Mountainous and broken.
Sierra .....	1,003,442	92,160	1,095,602	Mountainous, grazing.
Socorro .....	2,861,443	1,414,310	4,275,753	Mountainous, table-lands for grazing.
Total .....	8,941,729	4,460,228	13,401,957	
Roswell :				
Chaves .....	1,546,900	1,097,760	2,644,660	Grazing, rolling prairie.
Eddy .....	1,167,590	1,745,400	2,912,990	Mostly prairie, some timber in mountains.
Lincoln .....	109,072	413,880	1,514,600	Grazing, timber in mountains.
Otero .....	.....	761,600	761,600	Grazing land.
Torrance .....	180,200	.....	180,200	Prairie grazing land.
Total .....	3,985,410	4,018,640	8,004,050	
Santa Fe :				
Bernalillo .....	77,940	38,400	116,340	Mountainous, timber, and grazing.
Colfax .....	42,980	.....	42,980	Mountainous, grazing.
Guadalupe .....	578,240	17,520	595,760	Grazing and agricultural.
McKinley .....	696,580	172,400	868,980	Mountainous and grazing.
Mora .....	161,410	23,040	184,450	Do.
Rio Arriba.....	343,765	184,440	528,205	Do.
Sandoval .....	295,080	373,820	668,900	Do.
San Juan .....	966,280	468,000	1,434,280	Grazing and agricultural.
San Miguel.....	486,390	137,120	623,510	Do.
Santa Fe .....	241,280	113,160	354,440	Mountainous and grazing.
Socorro .....	804,120	77,440	881,560	Do.
Taos .....	189,680	276,800	466,480	Do.
Torrance .....	631,550	147,840	779,390	Timber, agricultural, grazing, and salt lands.
Valencia .....	870,830	132,420	1,003,250	Grazing and agricultural.
Total .....	6,386,125	2,162,400	8,548,525	
Tucumcari :				
Curry .....	29,563	.....	29,563	Sandy, reasonably level land.
Guadalupe .....	98,098	.....	98,098	Grazing and broken.
Quay .....	300,420	24,300	324,720	Do.
San Miguel.....	20,121	10,000	30,121	Grazing.
Union .....	130,938	.....	130,938	Grazing and broken.
Total .....	579,140	34,300	613,440	
State total..	23,093,519	10,677,848	33,771,367	

## VACANT PUBLIC LANDS—Continued.

## NORTH DAKOTA.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
<b>Bismarck :</b>	Acres.	Acres.	Acres.	
Burleigh .....	3,121	.....	3,121	Agricultural and grazing.
Emmons .....	3,206	.....	3,206	Do.
Kidder .....	6,716	.....	6,716	Do.
Logan .....	2,538	.....	2,538	Do.
McIntosh .....	3,292	.....	3,292	Do.
McLean .....	1,255	.....	1,255	Do.
Mercer .....	10,374	.....	10,374	Do.
Morton .....	31,103	.....	31,103	Do.
Oliver .....	3,162	.....	3,162	Grazing and broken.
Sheridan .....	1,474	.....	1,474	Do.
Wells .....	378	.....	378	Do.
<b>Total .....</b>	<b>66,619</b>	<b>.....</b>	<b>66,619</b>	
<b>Devils Lake :</b>				
Benson .....	1,825	.....	1,825	Prairie, farming.
Eddy .....	360	.....	360	Broken, farming, and grazing lands.
McHenry .....	5,760	.....	5,760	Prairie, farming.
McLean .....	900	.....	900	Grazing and farming.
Pierce .....	2,970	.....	2,970	Do.
<b>Total .....</b>	<b>11,815</b>	<b>.....</b>	<b>11,815</b>	
<b>Dickinson :</b>				
Adams .....	1,280	.....	1,280	Agricultural and grazing.
Billings .....	324,396	.....	324,396	Do.
Bowman .....	76,966	.....	76,966	Do.
Dunn .....	100,196	.....	100,196	Do.
McKenzie .....	226,606	.....	226,606	Do.
Stark .....	880	.....	880	Do.
<b>Total .....</b>	<b>730,324</b>	<b>.....</b>	<b>730,324</b>	
<b>Fargo :</b>				
Dickey .....	836	.....	836	Farming and grazing lands.
Eddy .....	42	.....	42	Do.
Griggs .....	158	.....	158	Grazing.
Kidder .....	1,819	.....	1,819	Farming and grazing lands.
Ransom .....	125	.....	125	Do.
Richland .....	177	.....	177	Grazing.
Sargent .....	170	.....	170	Agricultural and grazing.
Stutsman .....	977	.....	977	Farming and grazing lands.
Wells .....	40	.....	40	Do.
<b>Total .....</b>	<b>4,344</b>	<b>.....</b>	<b>4,344</b>	
<b>Minot :</b>				
Burke .....	3,880	.....	3,880	Grazing and farming.
Divide .....	600	.....	600	Do.
McLean .....	1,120	.....	1,120	Grazing, and broken farming lands.
Montrail .....	16,400	.....	16,400	Do.
Renville .....	840	.....	840	Grazing and farming.
Ward .....	3,440	.....	3,440	Grazing, and broken farming lands.
<b>Total .....</b>	<b>26,280</b>	<b>.....</b>	<b>26,280</b>	
<b>Williston :</b>				
Burke .....	6,537	.....	6,537	Broken, grazing.
Divide .....	42,741	.....	42,741	Do.
McKinzie .....	299,529	.....	299,529	Grazing, and broken farming lands.
Montrail .....	27,421	.....	27,421	Do.
Williams .....	84,723	.....	84,723	Do.
<b>Total .....</b>	<b>460,951</b>	<b>.....</b>	<b>460,951</b>	
<b>State total..</b>	<b>1,300,333</b>	<b>.....</b>	<b>1,300,333</b>	



VACANT PUBLIC LANDS—Continued.  
OKLAHOMA.

Land district and county.	Area unappropriated and unserved.			Brief description of character of unappropriated and unserved land.
	Surveyed.	Unsurveyed.	Total.	
	Acres.	Acres.	Acres.	
Guthrie:				
Blaine .....	1,385		1,385	Grazing land.
Caddo .....	650		650	Mountainous and sandy.
Canadian .....	794		794	Grazing land.
Cleveland .....	489		489	Rough grazing land.
Custer .....	458		458	Broken and rocky.
Ellis .....	4,236		4,236	Grazing lands.
Dewey .....	5,053		5,053	Do.
Grant .....	33		33	Rough grazing land.
Kingfisher .....	277		277	Grazing lands.
Klowa .....	640		640	Mountainous.
Lincoln .....	10		10	Sandy grazing lands.
Logan .....	9		9	Grazing lands.
Oklahoma .....	8		8	Do.
Pottawattomie .....	150		150	Rough grazing land.
Roger Mills....	4,740		4,740	Grazing lands.
Washita .....	80		80	Rough grazing lands.
Total .....	19,012		19,012	
Lawton:				
Beckham .....	9,310		9,310	Rough, unfit for cultivation.
Comanche .....	1,298		1,298	Mountainous.
Greer .....	6,580		6,580	Rough, unfit for cultivation.
Jackson .....	2,905		2,905	Do.
Roger Mills....	3,694		3,694	Do.
Tillman .....	120		120	Grazing lands.
Total .....	23,907		23,907	
Woodward* .....				
State total...	42,919		42,919	

OREGON.

Burns:				
Crooks .....	88,075		88,075	Principally grazing; some timber.
Grant .....	180,210	3,040	183,250	Grazing, timber, and farming.
Harney .....	2,587,957	1,325,322	3,913,279	Do.
Wheeler .....	13,080		13,080	Do.
Total .....	2,869,322	1,328,362	4,197,684	
La Grande:				
Baker .....	401,680	25,500	427,180	55 per cent timbered mountains, 10 per cent arid, 25 per cent grazing, 10 per cent farming.
Grant .....	194,680		194,680	50 per cent timbered mountains, 35 per cent grazing, 15 per cent farming.
Morrow .....	59,240		59,240	25 per cent timbered mountains, 40 per cent grazing, 25 per cent arid, 10 per cent farming.
Umatilla .....	115,960		115,960	30 per cent timbered mountains, 30 per cent arid, 35 per cent grazing, 5 per cent farming.
Union .....	58,960		58,960	75 per cent timbered mountains, 15 per cent grazing, 10 per cent farming.
Wallowa .....	158,560	13,400	172,000	50 per cent timbered mountains, 45 per cent grazing, 5 per cent farming.
Total .....	989,080	39,940	1,028,020	
Lakeview:				
Crook .....	422,946	48,500	471,446	One-tenth mountainous, two-tenths agricultural, seven-tenths grazing.
Klamath .....	738,120	123,473	861,593	Two-tenths timber, three-tenths agricultural, five-tenths grazing.
Lake .....	2,134,520	446,930	2,581,450	Three-tenths timber, one-tenth mountainous, three-tenths agricultural, three-tenths grazing.
Total .....	3,295,586	618,903	3,914,489	

\*No vacant or unappropriated land in this district.

## VACANT PUBLIC LANDS—Continued.

## OREGON—Continued.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
<b>Portland :</b>	Acres.	Acres.	Acres.	
Benton .....	1,981	440	2,421	Broken, grazing lands.
Clackamas .....	8,389	.....	8,389	Timbered, farming, and grazing lands.
Clatsop .....	1,339	4,920	6,259	Timbered and grazing lands.
Columbia .....	40	.....	40	Broken, grazing, agricultural.
Lincoln .....	14,846	41,516	56,362	Timber and grazing lands, broken.
Linn .....	1,760	17,000	18,760	Timber and grazing lands.
Marion .....	40	.....	40	Farming and timber lands, broken.
Multnomah .....	2,360	.....	2,360	Timberland.
Polk .....	451	.....	451	Broken, timber, and grazing lands.
Tillamook .....	29,976	.....	29,976	Timber and grazing lands, broken.
Washington .....	360	.....	360	Broken, timbered, grazing, agri-cultural.
Yamhill .....	4,287	.....	4,287	Rolling, timber, and grazing lands.
<b>Total .....</b>	<b>65,829</b>	<b>63,876</b>	<b>129,705</b>	
<b>Roseburg :</b>				
Benton .....	4,051	.....	4,051	Timber and grazing lands.
Coos .....	16,899	6,920	23,819	Timber, agricultural.
Curry .....	34,984	1,240	36,224	Mountainous, timber.
Douglas .....	27,072	14,460	41,532	Mineral, grazing and agricultural.
Jackson .....	50,556	2,880	53,436	Timber, grazing, fruit.
Josephine .....	30,337	25,388	55,725	Fruit, farming, and mining.
Klamath .....	600	.....	600	Timberland.
Lane .....	20,028	.....	20,028	Timber, farming, and mining.
Lincoln .....	1,140	.....	1,140	Broken, grazing.
Linn .....	277	.....	277	Hilly, grazing.
<b>Total .....</b>	<b>185,944</b>	<b>50,888</b>	<b>236,832</b>	
<b>The Dalles :</b>				
Crook .....	931,000	11,520	942,520	Lands in district are broken and hilly, and principally adapted to grazing purposes. There are some small valleys and some undulating table-lands which constitute good farming lands. Greater portion is broken, hilly, and mountainous.
Gilliam .....	104,120	1,760	105,880	
Grant .....	43,920	.....	43,920	
Hood River .....	840	.....	840	
Morrow .....	21,000	.....	21,000	
Sherman .....	56,680	640	57,320	
Wasco .....	235,015	.....	235,015	
Wheeler .....	284,000	.....	284,000	
<b>Total .....</b>	<b>1,676,575</b>	<b>13,920</b>	<b>1,690,495</b>	
<b>Vale :</b>				
Baker .....	313,833	.....	313,833	Grazing, timber, and farming.
Grant .....	44,565	.....	44,565	
Harney .....	396,594	.....	396,594	
Malheur .....	3,419,918	1,881,040	5,300,958	
<b>Total .....</b>	<b>4,174,910</b>	<b>1,881,040</b>	<b>6,055,950</b>	
<b>State total..</b>	<b>13,257,246</b>	<b>3,995,929</b>	<b>17,253,175</b>	

## SOUTH DAKOTA.

<b>Bellefourche :</b>				
Butte .....	684,720	.....	684,720	Prairie, grazing, and farming.
Harding .....	290,400	.....	290,400	
Lawrence .....	5,880	.....	5,880	
Meade .....	57,720	.....	57,720	
<b>Total .....</b>	<b>1,038,720</b>	<b>.....</b>	<b>1,038,720</b>	
<b>Chamberlain :</b>				
Brule .....	1,990	.....	1,990	Broken and grazing lands.
Lyman .....	14,680	.....	14,680	
Stanley .....	46,580	.....	46,580	
<b>Total .....</b>	<b>63,250</b>	<b>.....</b>	<b>63,250</b>	Do.



## VACANT PUBLIC LANDS—Continued.

## SOUTH DAKOTA—Continued.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
Gregory :	Acres.	Acres.	Acres.	
Lyman .....	7,826	.....	7,826	Mountainous.
Tripp .....	49,685	.....	49,685	Grazing and farming.
Total .....	57,511	.....	57,511	
Lemmon :				
Corson (S. D.) ..	250,414	.....	250,414	Prairie land; much of it rough and rolling and with many buttes; stony hills.
Harding (S. D.) ..	214,080	.....	214,080	
Morton (N. D.) ..	43,397	.....	43,397	
Perkins (S. D.) ..	137,480	.....	137,480	
Total .....	645,371	.....	645,371	
Pierre :				
Hand .....	62	.....	62	Lake beds and stony.
Hughes .....	2,360	.....	2,360	Farming and grazing lands.
Hyde .....	33	.....	33	Grazing lands.
Lyman .....	1,560	.....	1,560	Do.
Potter .....	1,595	.....	1,595	Broken.
Spink .....	560	.....	560	Lake beds and stony.
Stanley .....	268,460	.....	268,460	Grazing lands.
Sully .....	9,990	.....	9,990	Farming and grazing lands.
Total .....	284,620	.....	284,620	
Rapid City :				
Custer .....	90,120	84,000	174,120	Broken, agricultural, mineral, timber, and grazing.
Fall River .....	200,530	16,640	217,170	Part hilly; agricultural, grazing, and timbered.
Lawrence .....	1,720	22,080	23,800	Broken timbered, mining and prairie, agricultural and grazing.
Meade .....	168,900	.....	168,900	Part hilly and part prairie; mineral, agricultural, and timber land.
Pennington ...	257,100	.....	257,100	Agricultural, grazing, mineral, and timbered; partly mountainous.
Total .....	718,370	122,720	841,090	
Timber Lake :				
Brown .....	160	.....	160	Swampy.
Campbell .....	1,800	.....	1,800	Agricultural and grazing.
Corson .....	90,440	.....	90,440	Rolling, farming, and grazing.
Day .....	65	.....	65	Lowlands.
Dewey .....	201,363	.....	201,363	Rolling, farming, and grazing.
Edmunds .....	80	.....	80	Agricultural and grazing.
McPherson .....	80	.....	80	Do.
Marshall .....	40	.....	40	Rough.
Schnasse .....	448,463	.....	448,463	Rolling, farming, and grazing.
Walworth .....	240	.....	240	Agricultural and grazing.
Total .....	742,731	.....	742,731	
State total ..	3,550,573	122,720	3,673,293	

## UTAH.

Salt Lake City :				
Beaver .....	299,731	1,069,599	1,369,330	Generally arid, grazing, and mountainous.
Boxelder .....	1,473,872	569,952	2,043,824	Do.
Cache .....	53,675	239,057	292,732	Do.
Carbon .....	522,856	215,146	738,002	Do.
Davis .....	32,642	10,964	43,606	Do.
Emery .....	331,491	1,835,881	2,167,372	Do.
Garfield .....	327,942	2,221,661	2,549,603	Do.
Grand .....	507,607	1,295,744	1,803,351	Do.
Iron .....	448,558	862,388	1,310,946	Do.
Juab .....	615,054	1,164,064	1,779,118	Do.
Kane .....	504,239	1,812,931	2,317,170	Do.
Millard .....	1,202,083	2,322,015	3,524,098	Do.
Morgan .....	52,062	62,056	114,118	Do.

VACANT PUBLIC LANDS—Continued.  
UTAH—Continued.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
<b>Salt Lake City—</b>				
Contd.	Acres.	Acres.	Acres.	
Piute .....	147,563	78,875	226,438	Generally arid, grazing, and moun- tainous.
Rich .....	298,060	21,487	319,547	Do.
Salt Lake .....	23,701	29,335	53,036	Do.
San Juan .....	236,853	3,669,011	3,905,864	Do.
Sanpete .....	304,546	38,691	343,237	Do.
Sevier .....	526,062	200,999	727,061	Do.
Summit .....	119,870	7,557	127,427	Do.
Tooele .....	1,263,633	2,402,608	3,666,241	Do.
Utah .....	105,522	361,525	467,047	Do.
Wasatch .....	16,668	291,567	308,235	Do.
Washington .....	391,079	521,246	912,325	Do.
Wayne .....	220,425	1,197,756	1,418,181	Do.
Weber .....	83,829	25,211	109,040	Do.
<b>Total .....</b>	<b>10,109,623</b>	<b>22,527,326</b>	<b>32,636,949</b>	
<b>Vernal:</b>				
Uintah .....	1,013,774	919,709	1,933,483	Arid, mountainous, mineral, agri- cultural, grazing.
Wasatch .....	464,172	.....	464,172	Do.
<b>Total .....</b>	<b>1,477,946</b>	<b>919,709</b>	<b>2,397,655</b>	
<b>State total...</b>	<b>11,587,569</b>	<b>23,447,035</b>	<b>35,024,604</b>	

WASHINGTON.

<b>North Yakima:</b>				
Benton .....	65,200	.....	65,200	Irrigated, arid, mountainous.
Grant .....	24,680	.....	24,680	Do.
Kittitas .....	125,000	220,000	345,000	Irrigated, arid, mountainous timber
Yakima .....	87,000	274,500	361,500	Irrigated, arid, mountainous.
<b>Total .....</b>	<b>301,880</b>	<b>494,500</b>	<b>796,380</b>	
<b>Olympia:</b>				
Chehalis .....	240	.....	240	Mountainous timbered lands.
Jefferson .....	146	.....	146	Do.
King .....	1,053	.....	1,053	Do.
Kitsap .....	40	.....	40	Do.
Mason .....	975	.....	975	Do.
Pierce .....	281	.....	281	Do.
Thurston .....	44	.....	44	Do.
<b>Total .....</b>	<b>2,779</b>	<b>.....</b>	<b>2,779</b>	
<b>Seattle:</b>				
Clallam .....	1,600	1,000	2,600	Mountainous and broken; good supply of excellent timber.
Jefferson .....	400	.....	400	Rough and broken.
King .....	3,000	2,500	5,500	Broken and mountainous.
San Juan .....	2,500	.....	2,500	Broken, with little timber.
Skagit .....	5,800	8,000	13,800	Broken, heavily timbered, and mountainous.
Snohomish .....	.....	2,000	2,000	Do.
Whatcom .....	3,500	5,000	8,500	Do.
<b>Total .....</b>	<b>16,800</b>	<b>18,500</b>	<b>35,300</b>	
<b>Spokane:</b>				
Adams .....	17,666	.....	17,666	Arid lands, valuable for fruit and grain.
Douglas .....	.....	1,500	1,500	Arid lands.
Ferry .....	36,432	10,880	47,312	Farming, grazing, timber, and mineral.
Lincoln .....	44,189	.....	44,189	Farming and grazing.
Okanogan .....	11,302	19,960	31,262	Farming, grazing, and mineral.
Spokane .....	1,259	.....	1,259	Do.
Stevens .....	148,560	195,180	343,740	Mountainous, farming, and min- eral.
Whitman .....	545	.....	545	Grazing lands.
<b>Total .....</b>	<b>259,953</b>	<b>227,520</b>	<b>487,473</b>	



**VACANT PUBLIC LANDS—Continued.**  
**WASHINGTON—Continued.**

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
<b>Vancouver :</b>	Acres.	Acres.	Acres.	
Clarke .....	1,721	560	2,281	Timbered and agricultural.
Cowlitz .....	3,670	7,080	10,750	Do.
Klickitat .....	31,345	1,280	32,625	Timbered, agricultural, grazing.
Lewis .....	1,612	2,240	3,852	Timbered and agricultural.
Pacific .....	540	.....	540	Do.
Skamania .....	4,385	4,040	8,425	Do.
Wahkiakum .....	62	.....	62	Timbered.
<b>Total .....</b>	<b>43,335</b>	<b>15,200</b>	<b>58,535</b>	
<b>Walla Walla :</b>				
Adams .....	11,227	.....	11,227	Prairie, farming, and grazing lands.
Asotin .....	68,349	.....	68,349	Mountainous, some timber, and prairie.
Benton .....	35,934	.....	35,934	Desert, grazing, some timber, prairie, and farming.
Columbia .....	11,969	.....	11,969	Mountainous, some timber, and prairie.
Franklin .....	35,595	.....	35,595	Prairie, grazing lands; no timber.
Garfield .....	8,035	.....	8,035	Farming, grazing and timber.
Klickitat .....	13,517	.....	13,517	Grazing and farming; some timber.
Walla Walla .....	12,295	.....	12,295	Do.
Whitman .....	15,991	.....	15,991	Prairie, farming, and grazing lands.
<b>Total .....</b>	<b>212,912</b>	.....	<b>212,912</b>	
<b>Waterville :</b>				
Chelan .....	27,428	2,560	29,988	Mountainous, timber, farming.
Douglas .....	73,122	4,080	77,202	Do.
Grant .....	95,388	.....	95,388	Prairie, farming, and grazing.
Okanogan .....	162,634	19,200	181,834	Do.
<b>Total .....</b>	<b>358,572</b>	<b>25,840</b>	<b>384,412</b>	
<b>State total...</b>	<b>1,196,231</b>	<b>781,560</b>	<b>1,977,791</b>	

**WISCONSIN.**

<b>Wausau :</b>				
Adams .....	100	.....	100	Scrubby oak openings, sandy.
Ashland .....	60	.....	60	Farming and timber lands.
Barron .....	40	.....	40	Level timber lands.
Bayfield .....	2,640	.....	2,640	Farming and timber lands.
Buffalo .....	200	.....	200	Broken, agricultural lands.
Burnett .....	2,280	.....	2,280	Ordinary agricultural lands.
Chippewa .....	160	.....	160	Timber and agricultural lands.
Clark .....	360	.....	360	Do.
Douglas .....	1,440	.....	1,440	Farming and timbered lands.
Dunn .....	240	.....	240	Timbered, broken, agricultural lands.
Eau Claire .....	240	.....	240	Agricultural lands.
Florence .....	80	.....	80	Broken, timbered lands.
Forest .....	160	.....	160	Heavily timbered lands.
Iron .....	120	.....	120	Stony.
Jackson .....	440	.....	440	Agricultural lands.
Juneau .....	80	.....	80	Do.
Lincoln .....	40	.....	40	Heavily timbered, some swampy.
Marathon .....	100	.....	100	Broken.
Marinette .....	600	.....	600	Swampy, timbered lands.
Monroe .....	440	.....	440	Agricultural and grazing.
Oconto .....	160	.....	160	Timbered lands.
Oneida .....	1,000	.....	1,000	Heavily timbered, part swampy.
Polk .....	400	.....	400	Farming.
Portage .....	40	.....	40	Sandy soil.
Price .....	320	.....	320	Timbered lands.
Rusk .....	280	.....	280	Broken.
Sawyer .....	400	.....	400	Timbered, farming, swampy.
Shawano .....	40	.....	40	Swampy.
Taylor .....	120	.....	120	Timbered lands.
Trempealeau .....	80	.....	80	Broken lands.
Vilas .....	120	.....	120	Heavily timbered, part swampy.
Washburn .....	720	.....	720	Timbered, agricultural lands.
<b>State total...</b>	<b>13,500</b>	.....	<b>13,500</b>	

## VACANT PUBLIC LANDS—Continued.

## WYOMING.

Land district and county.	Area unappropriated and unre-served.			Brief description of character of unappropriated and unre-served land.
	Surveyed.	Unsur-veyed.	Total.	
Buffalo:	Acres.	Acres.	Acres.	
Bighorn .....	2,320,424	560,577	2,881,001	Grazing, mountainous, timber, agricultural.
Converse .....	10,400	.....	10,400	Grazing.
Crook .....	304,252	.....	304,252	Do.
Fremont .....	12,536	.....	12,536	Do.
Johnson .....	2,166,133	35,200	2,201,333	Agricultural, grazing, timber, mountainous.
Natrona .....	70,838	.....	70,838	Grazing.
Sheridan .....	743,050	173,120	916,170	Timber, grazing, agricultural, mountainous.
Weston .....	298,554	.....	298,554	Grazing.
Total .....	5,926,187	768,897	6,695,084	
Cheyenne:				
Albany .....	1,051,285	21,581	1,072,866	About one-half county broken, mountainous land. Other half prairie, grazing, and farming lands; farm land along streams.
Carbon .....	2,108,950	10,701	2,119,651	Greater portions broken, mountainous land; some timber, agricultural land along streams.
Fremont .....	161,071	32,979	194,050	Mountainous, arid, timber.
Laramie .....	2,041,031	.....	2,041,031	Principally prairie and broken grazing lands, with agricultural land along streams which can be irrigated.
Sweetwater ...	551,933	.....	551,933	Mountainous, broken and alkaline plains.
Total .....	5,914,270	65,261	5,979,531	
Douglas:				
Converse .....	2,949,531	6,400	2,955,931	Grazing, mountainous, and mineral.
Fremont .....	796,977	20,622	817,599	Grazing and mountainous.
Natrona .....	2,786,179	104,716	2,890,895	Grazing, mineral, and mountainous.
Total .....	6,532,687	131,738	6,664,425	
Evanston:				
Fremont .....	577,823	583,337	1,161,160	Mountainous.
Sweetwater ...	3,746,115	338,947	4,085,062	Do.
Uinta .....	1,701,448	611,200	2,312,648	Do.
Total .....	6,025,386	1,533,484	7,558,870	
Lander:				
Bighorn .....	507,818	700	508,518	Mountainous, farming, grazing, and timber.
Fremont .....	2,180,246	120,593	2,309,839	Arid, mountainous, grazing, and farming.
Park .....	872,383	43,569	915,952	Mountainous, broken, and grazing.
Total .....	3,560,447	164,862	3,734,309	
Sundance:				
Converse .....	90,186	.....	90,186	Prairie and grazing lands; good for farming.
Crook .....	1,296,039	.....	1,296,039	Semimountainous, with fertile valleys.
Weston .....	1,611,161	.....	1,611,161	Timber, grazing, and farming lands.
Total .....	2,997,386	.....	2,997,386	
State total....	30,965,363	2,664,242	33,629,605	



## VACANT PUBLIC LANDS—Continued.

## RECAPITULATION BY STATES AND TERRITORIES.

State or Territory.	Area unappropriated and unreserved.		
	Surveyed.	Unsurveyed.	Total.
	Acres.	Acres.	Acres.
Alabama .....	100,200	.....	100,200
Alaska .....	.....	368,011,291	368,011,291
Arizona .....	12,040,428	28,982,455	41,022,883
Arkansas .....	515,455	.....	515,455
California .....	18,012,903	5,350,061	23,362,964
Colorado .....	19,069,624	1,529,476	20,599,100
Florida .....	321,638	155,531	477,169
Idaho .....	6,180,332	17,942,705	24,123,037
Kansas .....	108,402	.....	108,402
Louisiana .....	70,313	.....	70,313
Michigan .....	105,130	.....	105,130
Minnesota .....	1,759,027	45,965	1,804,992
Mississippi .....	51,960	.....	51,960
Missouri .....	1,483	.....	1,483
Montana .....	15,283,718	16,746,928	32,030,646
Nebraska .....	1,336,499	.....	1,336,499
Nevada .....	28,924,771	26,058,377	54,983,148
New Mexico .....	23,093,519	10,677,848	33,771,367
North Dakota .....	1,300,333	.....	1,300,333
Oklahoma .....	42,919	.....	42,919
Oregon .....	13,257,246	3,995,929	17,253,175
South Dakota .....	3,550,573	122,720	3,673,293
Utah .....	11,587,569	23,447,035	35,034,604
Washington .....	1,196,231	781,560	1,977,791
Wisconsin .....	13,500	.....	13,500
Wyoming .....	30,965,363	2,664,242	33,629,605
Grand total .....	188,889,136	506,512,123	695,401,259

<sup>1</sup>The unreserved lands in Alaska are mostly unsurveyed and unappropriated.

## LEAVE OF ABSENCE.

1. Grounds for.
2. Generally.
3. Law.
4. Application form.
5. Three-year law absence.
6. Special cases; see also Reclamation Lands.
7. Official Employment.

1. Grounds for leave of absence from a homestead are as follows: Sickness, total or partial failure of crops, or unavoidable casualty.

(a) Applications for leaves of absence should be addressed to the register and receiver of the land office where the entry was made and should be sworn to by the applicant and some other disinterested person before such register or receiver or before some officer in the land district using a seal and authorized to administer oaths, except in cases where, through age, sickness, or extreme poverty, the entryman is unable to visit the district for that purpose, when the oath may be made outside of the land district.

(b) The law authorizes registers and receivers to grant leaves of absence for a period not exceeding one year at any one time, subject to the approval of the Commissioner of the General Land Office, whenever it shall be made to appear that the settler is "unable, by reason of a total or partial destruction or failure of crops, sickness, or other unavoidable casualty, to secure a support for himself, herself, or those dependent upon him or her, upon the lands settled upon \* \* \*."

(c) In each case full particulars should be given in the application, which should state the failure or destruction of crops, if the crops have failed or been destroyed, to what extent, and the cause thereof. In case of sickness, what disease or injury and to what extent claimant is prevented thereby from continuing on the land, and certificate from the physician in attendance, setting forth the facts, should be furnished when practicable. In the case of "other unavoidable casualty," the character, cause, and extent thereof and its effect upon the land or the claimant should be stated.

(d) Residence must be established upon the land within six months after date of entry, and additional time can not be granted within which to establish such residence, nor will the leave of absence be granted unless bona fide residence shall have been first established upon the land.

(e) The time of actual absence under such leave can not be considered as constructive residence or be deducted from the period of actual residence required by law.

2. The place of one's domicile determines the place of his residence.

Absence immediately following final proof is indicative of bad faith.

Leave of absence is no protection against a contest for abandonment where the entryman prior to such leave has failed to comply with the law.

Contest on the ground of abandonment will not lie until after the expiration of six months following the expiration of the leave of absence.

A second and third year's leave of absence may be granted a homestead entryman upon proper showing therefor, without requiring an intervening period of residence on the land, provided sufficient time remains within which to comply with the law.

See case of James McCourt (33 L. D., 386).

Action of Register and Receiver granting leave of absence under Sec. 3 of the act of March 2, 1889, is in all cases subject to review by the Commissioner of the General Land Office.

See case of Leola Farlow (35 L. D., 269).



3. The law applicable generally may be found in Sec. 3, of an act entitled, "An Act to Withdraw Certain Public Lands from Private Entry, and for Other Purposes"; approved March 2, 1889 (25 Stat., 854). This section was amended by an act of December 29, 1894, 28 Stat., 599, so as to reconfer a second right on those who forfeited their entry on account of any of the reasons mentioned. There are two other acts of congress with reference to leave of absence from homesteads, besides resolutions of Congress granting temporary absences from homesteads, but they are not considered of value to the present day entryman, and therefore such laws are not embodied in this work. The act of Congress upon which the present day homestead entrymen are granted leave of absence, as far as may be applicable to the subject, is as follows:

**Public Lands Withdrawn from Private Entry, Except in Missouri—Homestead Laws Modified. (28 Stat., 599.)**

An Act to withdraw certain public lands from private entry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act no public lands of the United States, except those in the State of Missouri, shall be subject to private entry.

\* \* \* \* \*

Sec. 3. That whenever it shall be made to appear to the register and receiver of any public-land office, under such regulations as the Secretary of the Interior may prescribe, that any settler upon the public domain under existing law is unable, by reason of a total or partial destruction or failure of crops, sickness, or other unavoidable casualty, to secure a support for himself, herself, or those dependent upon him or her upon the lands settled upon, then such register and receiver may grant to such a settler a leave of absence from the claim upon which he or she has filed for a period not exceeding one year at any one time, and such settler so granted leave of absence shall forfeit no rights by reason of such absence: Provided, That the time of such actual absence shall not be deducted from the actual residence required by law.

Sec. 4. That the price of all sections and parts of sections of the public lands within the limits of the portions of the several grants of lands to aid in the construction of railroads which have been heretofore and which may hereafter be forfeited, which were by the act making such grants or have since been increased to the double minimum price, and also of all lands within the limits of any such railroad grant, but not embraced in such grant, lying adjacent to and coterminous with the portions of the line of any such railroad which shall not be completed at the date of this act, is hereby fixed at one dollar and twenty-five cents per acre.

4. Applications for leave of absence should conform to the form herewith, which has been approved by the Department, and should be properly verified and corroborated. The application may be acknowledged before a Notary Public, U. S. Commissioner, Judge or Clerk of Court of Record or any other officers using a seal and authorized to administer an oath, or before the Register and Receiver of the land office in which the application is filed.

For further information on the subject consult title "Residence."

## FORM.

4-519

## DEPARTMENT OF THE INTERIOR.

## APPLICATION FOR LEAVE OF ABSENCE.

U. S. Land Office, ....., Serial No. ....

I, ....., being first duly sworn, on my oath state that I am the identical person who made Homestead Entry, No. ...., on ....., for the ....., Section ....., Township ....., Range ....., Meridian, at the United States Land Office at .....; that I established residence upon said land on ....., 191., and such residence has continued until ....., 191.; that my family consists of ..... and that I have placed the following improvements on the said land, to-wit: ....., which improvements are reasonably worth the sum of \$.....; that I have cultivated ..... acres of said tract the following years: .....; that my present post-office address is .....

I hereby ask for a leave of absence from the said land for a period of ....., from ..... to ....., and, in support of said request, I have to state as follows: .....

(Here state grounds upon which leave of absence is asked.)

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code, below.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....);

(Give full name and post-office address.)

that I verily believe affiant to be the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office in .....

(County and State.)

(Town.)

within the ..... land district, this ..... day of ....., 191..

(Official designation of officer.)

## AFFIDAVIT OF WITNESSES.

We, ....., of ....., ..... years of age, and .....,

(Give full Christian name.)

(Give full post-office address.)

of ....., ..... years of age, do solemnly swear that we are well

(Give full post-office address.)

(Give full Christian name.)

acquainted with the above-named affiant and the lands described, and personally know that the statements made by him in his application for leave of absence are true.

(Sign here, with full Christian name.)

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code, below.)

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by .....); and that said affidavit was duly subscribed

(Give full name and post-office address.)

and sworn to before me, at my office, in .....

(Town.)

....., within the ..... land district, this .....

(County and State.)

day of ....., 191..

(Official designation of officer.)



**UNITED STATES CRIMINAL CODE—CHAP. 6.**

Sec. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years. (Act, March 4, 1909. 35 Stat., 1111.)

United States Land Office at .....

Leave of absence granted from ....., 191.., to ....., 191..  
 .....  
 ..... Register.  
 ..... Receiver.

**THREE YEAR LAW ABSENCE.**

5. The act of Congress approved June 6, 1912, known as the Three Year Homestead Law, makes provision for leave of absence from the homestead as follows: \* \* \* "Provided, That upon filing in the local land office notice of the beginning of such absence, the entryman shall be entitled to a continuous leave of absence from the land for a period of not exceeding five months in each year after establishing residence, and upon the termination of such absence the entryman shall file a notice of such termination in the local land office, but in case of commutation the fourteen months' actual residence as now required by law must be shown, and the person commuting must be at the time a citizen of the United States." \* \* \*

**Forms of Notice.**

At this time no prescribed form for use in cases of absences under the above law have been provided. It is presumed that any form of notice which will serve to fully notify the local office of the time of commencement and termination of leave of absence under this law will be sufficient. We submit such forms as may be used or modified:

**Notice of Beginning of Leave of Absence.**

.....  
 (Date) .....  
 To the Register and Receiver, United States Land Office,  
 .....

Gentlemen: You will please take notice that, having made homestead entry, serial No. ...., dated the ..... day of ....., ..... for (described land), Sec. ...., Tp. ...., R. ...., and wishing to avail myself of the provisions and benefits of the Act of Congress approved June 6, 1912, known as "The Three Year Homestead Law," I did, on the ..... day of ....., ..... begin a leave of absence therefrom not to exceed five months. I established residence on my said homestead on the ..... day of ....., .....

(Name) .....  
 (P. O. Address) .....

**Notice of Termination of Leave of Absence.**

.....  
 (Date) .....  
 To the Register and Receiver, United States Land Office,  
 .....

Gentlemen: You are hereby notified that leave of absence from my homestead entry, serial No. .... for (described land), Sec. ...., Tp. ...., R. ...., granted by the provisions of the Act of Congress approved June 6, 1912, known as "The Three Year Homestead Law," beginning on the

..... day of ....., ....., was by me terminated on the ..... day of ....., ....., and that I have re-established residence on said land.

(P. O.) .....

6. For leave of absence to certain homesteader in special localities, see the act of Congress approved August 19, 1911, 40 L. D., pages 263 and 264. See also Reclamation Lands.

[Circular No. 54.]

#### **LEAVES OF ABSENCE FROM HOMESTEADS.**

Department of the Interior,  
General Land Office,  
Washington, September 8, 1911.

Registers and Receivers,

United States Land Offices (named below).

Gentlemen: Your attention is directed to the provisions of the act of Congress approved August 19, 1911 (Public, No. 27), entitled "An act granting leaves of absence to certain homesteaders," which reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons who have heretofore made homestead entries in the Lemmon, Timber Lake, Rapid City, Chamberlain, Belle Fourche, Gregory, and Pierre land districts in the State of South Dakota; in the Denver, Pueblo, Sterling, Hugo, Lamar, and Glenwood Springs land districts, in the State of Colorado; in the Valentine, O'Neill, North Platte, Broken Bow, and Alliance land districts, in the State of Nebraska; in the Lawton, Woodward, and Guthrie land districts, in the State of Oklahoma; in the Dickinson, Minot, Williston, Devils Lake, and Bismarek land districts, in the State of North Dakota; in the Cheyenne, Evanston, Sundance, Buffalo, Lander, and Douglas land districts, in the State of Wyoming; in the Clayton, Fort Sumner, Las Cruces, Tucumcari, Roswell, and Santa Fe land districts, in the Territory of New Mexico; in the Phoenix land district, in the Territory of Arizona; in the former Spokane Indian Reservation, in the State of Washington; and in the Burns, Vale, La Grand, and The Dalles land districts, in the State of Oregon, are hereby relieved from the necessity of residence and cultivation upon their lands from the date of approval of this act to April fifteenth, nineteen hundred and twelve; Provided, That the time of actual absence during the period named shall not be deducted from the full time of residence required by law.

Homestead entrymen coming under the above act who are absent from their claims for any period between the dates of August 19, 1911, and April 15, 1912, are not required to file application for such leave.

In the examination of final proofs, and in cases of contest alleging abandonment during the above period, you will give due consideration to the foregoing provisions.

Very respectfully,

John McPhaul,  
Acting Assistant Commissioner.

Approved September 8, 1911.

Samuel Adams,  
Acting Secretary.

#### **7. CONSTRUCTIVE RESIDENCE—OFFICIAL EMPLOYMENT.**

Instructions.

Department of the Interior,  
General Land Office,  
Washington, D. C., February 16, 1909.

Registers and Receivers,

United States Land Offices.

Gentlemen: For many years it has been the practice of the Department to permit a homestead entryman who had established



residence upon his claim and afterwards had been elected or appointed to a federal, state, or county office, to be absent from his entry if required by his official duty, and to consider such absence constructive residence upon his claim. This ruling includes deputies and assistants in such offices. See 2 L. D., 147; 6 L. D., 668; 7 L. D., 88; 9 L. D., 523, 525; 17 L. D., 195; 21 L. D., 155.

This privilege, which is not a statutory right but rests solely upon departmental rulings, has led to such grave abuse that the objects of the homestead laws have been to a great extent defeated. Therefore, the Department has decided to discontinue the said practice in so far as it has been applied to persons appointed to office, and limit it to persons elected to office. All decisions and instructions heretofore given, not in harmony with this view, are hereby overruled or modified in so far as they accredit such absence as residence, to persons not elected to office.

It is not intended, however, to disturb the status of persons who have acted under the rule heretofore prevailing, nor to deny the benefit of the rule to persons who, prior to March 1, 1909, shall have been appointed to such office. Persons having homestead entries, who enter upon public service in non-elective positions to which they were not appointed prior to above date, will be required to comply fully with all of the provisions of the homestead law just as other settlers.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:

Frank Pierce,  
Acting Secretary.

#### ACCRETIONS.

See Public Lands, Riparian Rights and Survey.

See Table of Circulars and Instructions, pages 117 to 137.

The disposal of land that is bounded by a water line that is shown by the official survey, conveys to the patentee a patent right, including subsequent accretions.

Gleason vs. Pent, 14 L. D. 375.

Accretions of an island reservation for military purposes becomes in fact and in law a part of such reservation, subject to the Act of July 5, 1884, on the abandonment of such reservation.

R. M. Snyder, 27 L. D. 82.

Where a sudden change occurs in the course of a navigable river that forms the boundary between a State and Territory, the reliction lying within the State is not the property of the United States or subject to survey as such; but that portion of the patented bed of the stream lying within the territory is the property of the United States and therefore subject to survey.

John P. Serry et al., 27 L. D. 330.

The interests of the Government as riparian proprietor ceases on the sale of the meandered tract; and all accretions of said tract, after survey and prior to sale, passes to the purchaser, and accretions thereof become the property of the riparian owner.

John J. Serry et al., 27 L. D. 330.

A tract belongs either to the owner of the adjacent land or passes to the State under the Swamp Grant and the Department will take no action in determining the ownership thereof, as the question involved lies properly within the jurisdiction of the Court.

Middleground, 7 L. D. 255.

Land formed by accretion belongs to the owner of the adjacent land.

W. G. Holland, 6 L. D. 20.

Middleground, 7 L. D. 255.

An application for the survey of land covered by a non-navigable lake must be denied where it appears that said lake has been meandered to the

adjacent land, disposed of by the Government, as the land covered by such lake belongs to the adjacent proprietors and not to the United States.

James Popple et al., 12 L. D. 433. Overruled.

John P. Hoel, 13 L. D. 588.

The application for the survey of an island in a non-navigable stream will not be allowed.

J. J. Lessard, 13 L. D. 724.

Land lying within the banks of a meandered stream and forming a part of the bed thereof as surveyed and subsequently left dry by a change in the channel thereof, cannot be entered under the homestead law, where patents have issued for the adjacent lands.

Max Loibl, 21 L. D. 429.

Land formed between the meander and shore line of Lake Michigan, through the acts of persons or corporations, is not the property of the Government, or subject to the jurisdiction thereof under the public land laws.

George W. Streeter et al., 21 L. D. 131.

The riparian ownership of the allottee, whose lands are adjacent to a meandered, non-navigable lake extends to the middle of said lake.

Amanda Hines, 14 L. D. 156.

The control and right to dispose of public lands lying under a navigable stream, that forms the boundary of a State and within the limits thereof, passes to the government of the State on its admission to the Union. But if a sudden change occurs thereafter of the course of said stream the reliction lying within such State is not the property of said State.

Gillespie vs. State of Nebraska, 28 L. D. 124.

Purchasers and grantees of meandered subdivisions bordering upon a body of water take title thereto for all the intents of ownership in which is that of the right of relictions. This right pertains to the ownership of lands bounded by a water line without reference to the accretion land, and hence passes to the United States in the case of a title acquired under the Swamp Grant.

French-Glenn Live Stock Co. vs. Marshall, 28 L. D. 444.

Accretions to an island formed by washing or recision become part of the lands they adjoin.

1 L. D. 596.

An island formed in a river, after the survey or disposition of the adjoining shore lands, does not belong to the United States, and the Department therefore has no jurisdiction to direct its survey.

L. F. Scott, 14 L. D. 433.

Where an island has been surveyed, sold and patented by the Government, and subsequently creates erosion, all the soil resulting in the formation of the island in a navigable stream occupying the area of the formerly surveyed and sold land does not operate to vest the title in the Government of such formation, and authorize the public survey of the same.

James C. McLaughlin, 12 L. D. 281.

## ACTS OF CONGRESS, CITED AND CONSTRUED.

The Statute numbers given refer to statutes at large, and the annotations refer to decisions of the Department of the Interior relating to Public Lands. Page numbers in black face at end of citations indicate statutes that will be found in this work.

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#### DEPARTMENT OF THE INTERIOR,

General Land Office.

Washington, D. C., September 14, 1907.

#### ORDER.

All cases pending in this Office will be acted upon in the regular order except when the contrary course is required by a proper regard for the public interest, or is deemed necessary to avoid extreme hardship in individual cases, and only in the latter event upon a showing, by affidavit of the individual or qualified officer of the corporate entryman, that the emergency which it is alleged requires special action is not such as could have been reasonably anticipated, and no cases will be made special except upon order of the Commissioner.

All orders in conflict or inconsistent with the terms of this order are hereby revoked.

Very respectfully,

R. A. Ballinger,  
Commissioner.

#### RULE OF APPROXIMATION.

"The rule is that where the difference between the excess and the deficiency that would be produced by approximation is but slight, the entry may be allowed to stand as made. (Vernon B. Matthews, 8 L. D., 79.) Also the rule of approximation will not be enforced where it operates to deprive the entryman of his improvements, and the difference between the excess and the deficiency is but slight." (Davis v. N. Pacific, 27 L. D., 78.)

Dickie v. Kennedy, 27, L. D., p. 308; 176.18 acres allowed.

The rule followed in the above case is to calculate the excess and the deficiency, and where the excess does not exceed the deficiency the rule obtains. It will also obtain where the difference is slight. It will obtain in cases where the applicant has valuable improvements of the land and a relinquishment or enforcement of the rule would operate to deprive him of his improvements.

The following cases demonstrate the application of the rule:

As entry was made before survey, and valuable improvements placed on each subdivision, an exception is made to the present rule enforcing an entry to approximate one hundred and sixty acres, as its enforcement herein would work irreparable injury to the entryman, who purchased under the former practice of the Department.

Joseph H. McComb, 5 L. D., 295; 187.24 acres allowed.

In view of the fact that settlement, with valuable improvements, was made long prior to survey, and that the entry, which was allowed, covers land so situated that the relinquishment of a portion thereof would be without value to the Government, and of the small amount involved, an exception is made to the rule of approximation.

Alexander Bouret, 5 L. D., 298; 176.50 acres allowed.

Initiation of claim prior to Government survey, extent of cultivable land falling within the lines of the claim as finally surveyed, and valuable improvements on each subdivision considered sufficient reasons for waiving the requirement of approximation.

Lafayette Council, 5 L. D., 631; 185.90 acres allowed.

The entry of a surveyed quarter section as such is authorized by the pre-emption and homestead laws, and the limit of acreage applied only when entry is made of parts of quarter sections.

William C. Elson, 6 L. D., 797; 183.70 acres allowed.

Where the difference between the excess and the deficiency that would be produced by approximation is but slight, the entry may be allowed to stand as made.

Vernon B. Matthews, 8 L. D., 79; 180.27 acres allowed.

A homestead entry for parts of different quarter sections should approximate one hundred and sixty acres, but exceptions to this rule are recognized when valuable improvements would be disturbed, or other like injury follow the relinquishment of a subdivision.

Frank Aldrich, 10 L. D., 587; 176.70 acres allowed.

An additional entry of a contiguous subdivision under Section 5, Act of March 2, 1889, is not defeated by excessive acreage, if the amount covered by both entries approximates one hundred and sixty acres as nearly as may be without abandoning the improvements or destroying the contiguity of the tracts entered.

Abram A. Still, 13 L. D., 610; 182.04 acres allowed.

The rule of approximation will not be enforced where it operates to deprive the entryman of his improvements, and the difference between the excess and the deficiency is but slight.

Joseph C. Herriek, 14 L. D., 222; 180.45 acres allowed.

Dickie v. Kennedy, 27 L. D., 305; 176.18 acres allowed.

The occupancy of a tract in connection with settlement and residence upon adjoining land operates to exclude such tract from indemnity selection.

The rule of approximation will not be enforced when it will deprive the entryman of his improvements, and the difference between the excess and the deficiency is but slight.

Davis v. Northern Pacific R. R. Co., 27 L. D., 78; 171 acres allowed.

See also 33 L. D., 606; 37 L. D., 330.

## ALIEN.

An alien is a foreigner, or one who owes his allegiance to some other government. Some aliens cannot make entry of public lands



because they cannot become citizens of the United States. Notably the Chinese and Japanese.

No rights can attach to lands claimed by aliens before filing his declaration to become a citizen of the United States. Settlement rights cannot be acquired, but where there is no adverse claim after survey, and the claimant makes declaration to become a citizen his right will relate back to date of settlement.

Consult title "Homestead," giving qualifications.

Under Sec. 2291 of the Revised Statutes, as amended by the act of June 6, 1812, the claimant must bear true allegiance to the Government of the United States. Commutation proof cannot be made upon a declaration to become a citizen. The claimant must be a full citizen when final proof is submitted.

Where the wife makes entry, either as the deserted wife, *feme sole* or as the widow of the husband who is a foreign born, evidence of his citizenship will need be shown.

**Widow and Minor Children of Alien Entryman, Who Becomes Insane Before Final Naturalization, May Be Naturalized Without Making Declaration of Intention.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when any alien, who has declared his intention to become a citizen of the United States, becomes insane before he is actually naturalized, and his wife shall thereafter make a homestead entry under the land laws of the United States, she and their minor children may, by complying with the other provisions of the naturalization laws be naturalized without making any declaration of intention. (Public No. 413, Approved, February 24, 1911.)

**[CIRCULAR.]**

**Instructions Relative to Final Orders and Certificates of Naturalization Issued Since March 3, 1903, Not in Keeping With Section 39 of the Act of That Date.**

Department of the Interior, General Land Office, Washington, D. C., August 11, 1906. Registers and Receivers, United States Land Offices. Sirs: Your attention is called to Section 39, Act March 3, 1903 (32 Stat., 1222), which declares that all final orders and certificates of naturalization thereafter issued or made by courts or tribunals granting naturalization shall be null and void if they do not show on their faces specifically that there has been made and filed of record in such court or tribunal an affidavit executed by the applicant for naturalization reciting and affirming the truth of every material fact requisite to his naturalization; and you are directed to reject all such orders or certificates, or copies thereof, as have not been made in conformity with that statute when presented by persons who claim to have been naturalized since the date of that act. Very respectfully, G. F. Pollock, Acting Commissioner. Approved August 11, 1906, Thos. Ryan, Acting Secretary.

**AMENDMENT.**

**Instructions as to Amendments Under Section 2372, Revised Statutes, as Amended by Act of February 24, 1909.  
Public No. 258.**

Department of the Interior,  
General Land Office.  
Washington, D. C., April 22, 1909.

Registers and Receivers,  
United States Land Offices.

Gentlemen: By act of February 24, 1909, section 2372, United States Revised Statutes, is amended to read as follows:



Sec. 2372. In all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, selector, or locator, or, in case of his death, his legal representatives, or, when the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be procured showing the mistake as to the numbers of the tract intended to be entered and that every reasonable precaution and exertion was used to avoid the error, with the register and receiver of the land district in which such tract of land is situate, who should transmit the evidence submitted to them, in each case, together with their written opinion both as to the existence of the mistake and the credibility of every person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made and that every reasonable precaution and exertion has been made to avoid it, is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if the same has not been disposed of and is subject to entry, or if not subject to entry, then to any other tract liable to such entry, selection, or location; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize such change of entry, nor shall anything herein contained affect the right of third persons.

The following rules are given which are to govern in the consideration of applications to amend entries, selections, or locations:

1. Applications for amendment must be filed in the local land office of the United States having jurisdiction over the land sought to be entered, and should be substantially in accordance with the printed form herewith. This form may be used for the amendment of non-mineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be verified by the oath of the applicant and corroborating witnesses, and must describe the land erroneously entered as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

2. The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that the proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has been undue delay in applying for amendment the application will be closely scrutinized and will not be allowed unless the utmost good faith is shown and the delay explained to the entire satisfaction of the Commissioner of the General Land Office.

3. The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by any adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and in cases of nonmineral claims the kind and quantity of timber on each legal subdivision applied for must be stated.

4. Where the final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the

land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the affidavit of the applicant, corroborated as hereinafter required, will be sufficient; but where final certificate has issued or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other incumbrance charged against the land. Where patent has been issued reconveyance of the land embraced in the patent must be made by deed executed by the claimant and also by his wife, if he be married, in accordance with the laws governing the execution of deeds conveying real estate in the State in which the land is situated, which deed must be recorded in the proper county office and accompanied by a certificate from the recording officer, or a satisfactory abstract showing the title to be clear and free from incumbrance.

5. The affidavit of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. Also, at least one witness must make affidavit, showing that he has personal knowledge of the facts concerning the alleged mistake, what opportunity he had for learning the facts, and setting out fully all pertinent knowledge he has relative thereto. The witness who testifies as to the facts from his personal knowledge may be one of the witnesses testifying as to the truth and veracity of the applicant.

6. The affidavit of the applicant must be executed before the register or receiver of the land office where the application is made or before a United States Commissioner or commissioner of the court exercising federal jurisdiction in the territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated, as required by the act of March 4, 1904 (33 Stat., 59). The corroborating affidavits may be made before any officer authorized to administer oaths and using a seal.

7. When an application to amend is filed in your office, you will make proper notations on your records and forward it to the General Land Office with your monthly returns, with your recommendation written at the place indicated in the form, and thereafter you will make no disposition of the land applied for until instructed by the General Land Office.

8. When an application to amend is received in the General Land Office, together with proper report and recommendation from the register and receiver, it will be considered, and, if found satisfactory, the amendment will be allowed and proper correction made on the records, of which you will be duly advised, to the end that the necessary corrections may be made on the records of your office and the applicant properly notified. Where an application is denied, an appeal may be taken to the Department.

9. Where amendments are allowed of claims upon which final proof has been submitted and publication or posting of notice is required, republication of notice applicable to the class of entry for



which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must make affidavit showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

10. The act in terms provides for amendment in all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, and therefore, perhaps, if strictly construed, provides for amendment only in cases where there has been a mistake in description or numbers of the land originally intended to be entered. However, under the supervisory authority of the Secretary of the Interior, the Department will allow amendments of entries made under laws which require settlement, cultivation, or improvement of the land entered in cases where, through no fault of the entryman, the land is found to be so unsuitable for the purpose for which it was entered as to make the completion of the entry impracticable if not impossible. In such cases at least one legal subdivision, approximating 40 acres in area, of the land embraced in the original entry shall be retained, and the tracts included by way of amendment must be contiguous thereto. Furthermore, in such cases and as an assurance of good faith, the application to amend must be filed within one year from date of the original entry. Applications for such amendments may be made under the rules given above, and on the prescribed form in so far as the same are applicable. A supplemental affidavit should also be furnished, if necessary, to show the facts.

11. Where entries, selections, or locations are improperly allowed by the land department, as where the lands are not subject to such entries, or locations, amendments will not be allowed because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

The circular of February 29, 1908 (36 L. D., 287), and all other circulars or instructions concerning amendments, incompatible herewith are hereby revoked.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved April 22, 1909.

R. A. Ballinger,  
Secretary.

Note: Applications for lands designated under the enlarged homestead law should contain a statement as to the amount of timber thereon, and whether or not the land sought is susceptible of irrigation from any known source of water supply. See approved form.

Consult title "Second Homestead Entries—Equitable Rule."

See 16 L. D., 171; 27 L. D., 389; 33 L. D., 110; 37 L. D., 655; 39 L. D., 48, and 40 L. D., 434 and 577.



DEPARTMENT OF THE INTERIOR.  
APPLICATION FOR AMENDMENT.  
(Section 2372, R. S., amended.)

I, ....., of ....., No. ....  
(Give post-office address.)  
having made ....., No. ....  
(Kind of entry, selection, or location.)  
for the ....., Section .....,  
Township ....., Range ....., Meridian .....,  
Land District, hereby apply to  
amend the same so that the description when amended will read as follows:  
....., Section .....,  
Township ....., Range ....., Meridian .....,  
and, being first duly sworn, upon oath say: That I originally intended to  
enter the .....  
(Describe lands applicant intended to enter.)

....., Section .....,  
Township ....., Range ....., Meridian .....,  
I have not sold, assigned, transferred, or relinquished the lands embraced in  
my said former claim, nor agreed to do so; nor have I taken from said land  
any timber or other thing of value.

(Set out fully below all of the facts showing how the mistake occurred, the  
precaution taken to avoid error, the grounds upon which the application is  
based, etc., as required by the regulations.)

I am well acquainted with the character of the land now applied for and  
with each and every legal subdivision thereof, having passed over each and  
every legal subdivision thereof, and from my personal knowledge I swear that  
there is not to my knowledge within the limits thereof any vein or lode of  
quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper,  
or any deposit of coal; nor within the limits of said lands any placer, cement,  
gravel, or other valuable mineral deposits; nor is there any salt spring or  
deposits of salt in any form sufficient to render it chiefly valuable therefor;  
that no portion of said land is claimed for mining purposes under the local  
customs or rules of miners or otherwise; that no portion of said land is  
worked for mineral during any part of the year by any person or persons; that  
said land is essentially nonmineral land; and that my application therefor is  
not for the purpose of fraudulently obtaining title to mineral land; that the  
land applied for is not occupied nor claimed by any adverse claimant.

The character of the land applied for is as follows:

.....  
(Describe the character of the land by legal subdivisions and state amount and kind of  
timber on each subdivision, if any.)

.....  
(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be pun-  
ished as provided by law for such offense. See Section 125, United States  
Criminal Code (over).

I Hereby Certify that the foregoing affidavit was read to or by affiant  
in my presence before affiant affixed signature thereto; that affiant is to  
me personally known (or has been satisfactorily identified before me by  
.....  
(Give full name and postoffice address.)

that I verily believe affiant to be a qualified applicant and the identical per-  
son hereinbefore described; and that said affidavit was duly subscribed and  
sworn to before me, at my office, in .....

(Town.)

....., within the .....

(County and State.)

..... Land District, this .....  
day of ....., 19....

.....  
(Official designation of officer.)

**CORROBORATING AFFIDAVITS.****Affidavit of Witness as to Facts.**

I, ....., whose post-office address  
 (Give full Christian name.)  
 is ....., being ..... years of age, and  
 (Insert address.)  
 by occupation a ....., do solemnly swear that the facts  
 within my personal knowledge relative to the mistake of.....  
 ..... in filing upon the .....  
 ..... Section .....  
 Township ....., Range ....., Meridian,  
 ..... Land District, the precaution taken  
 to avoid said error, and the grounds on which application for amendment is  
 filed, are as follows:

My knowledge of the foregoing facts was acquired as follows:

.....  
 (Sign here with full Christian name.)

I Hereby Certify that the foregoing affidavit was read to or by affiant  
 in my presence before affiant affixed signature thereto; that affiant is to  
 me personally known (or has been satisfactorily identified before me by  
 .....), and I verily believe affiant to be  
 a credible witness and the identical person hereinbefore described, and  
 that said affidavit was duly subscribed and sworn to before me, at my office,  
 in ....., County, State  
 (Town.)  
 of ....., within the .....  
 Land District, this ..... day of ....., 19....

.....  
 (Official designation of officer.)

Note.—Every person swearing falsely to the above affidavit will be pun-  
 ished as provided by law for such offense. See Section 125, United States  
 Criminal Code (over).

**Affidavit of Witnesses as to Character and Reputation of Applicant.**

We, ..... of .....  
 (Give full post-office address.)  
 ..... (Give full Christian name.)  
 ..... years of age, and by occupation.....  
 (Give full Christian name.)  
 and ..... of .....  
 (Give full post-office address.)  
 ..... years of age, and by occupation.....;  
 do solemnly swear that we have been well acquainted with the applicant  
 for ..... years and ..... years, respectively; that we have read  
 the statements made by him in his said application; that he is a person of  
 truth and veracity, and that we believe said statements to be true.

.....  
 (Sign here, with full Christian name.)

.....  
 (Sign here, with full Christian name.)

I Hereby Certify that the foregoing affidavit was read to or by affiant  
 in my presence before affiant affixed signature thereto; that affiant is to  
 me personally known (or has been satisfactorily identified before me by  
 .....), and I verily believe affiant to be  
 a credible witness and the identical person hereinbefore described, and  
 that said affidavit was duly subscribed and sworn to before me, at my office,  
 in ....., County, State  
 (Town.)  
 of ....., within the .....  
 Land District, this ..... day of ....., 19....

.....  
 (Official designation of officer.)

Note.—Every person swearing falsely to the above affidavit will be pun-  
 ished as provided by law for such offense. See Section 125, United States  
 Criminal Code (over).

United States Land Office at....., 19....

We Hereby Certify that the foregoing application is for surveyed land and that there is no prior valid adverse right to the same. We recommend that the application be.....

(If rejection is recommended, set out reasons therefor.)

Register.

Receiver.

## UNITED STATES CRIMINAL CODE.

Sec. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath, state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

## APPLICATIONS.

Priority.

Simultaneous.

See Table of Circulars, Instructions and Regulations.

The public lands of the United States are subject to disposition under general and special Acts of Congress. The laws of general application are the homestead, desert, timber and stone and isolated tracts. These laws are treated elsewhere in this work. The purpose of this chapter is to present the question of priority and validity of applications.

The prospective settler or entryman under any of the public land laws, and particularly the agricultural public land laws, should determine the location of the land he wishes to acquire. A personal inspection is essential in order that he may be able to make the non-mineral affidavit required and to give a proper description of the land by legal subdivision. Applications for public lands must be made upon forms prescribed by the department. Applications should be made before an officer qualified to administer oaths in such cases within the district. It is true that in some instances the officer before whom application and papers involving public lands may be acknowledged varies according to the character of the application. As a general thing applications for lands are made before either the Register or Receiver of the Land Office, Judge or a Clerk of a court of record, or a United States Commissioner of the District within which the land is situated.

When the application is not made before the Register and Receiver because of time, distance and expense necessary to do so, the application may be made before the nearest and most accessible qualified officer, as may be provided by Department regulations covering the character of the application involved.

The land must be subject to entry under the application presented. For example, lands applied for under the desert law must be desert in character within the meaning of the Act concerning the disposition thereof and the regulations of the Department thereunder, and this is true of lands applied for under any other law or Act of Congress.



**PRIORITY.**

1. "Applications presented at the land office in person have a preference over those reaching the office through the mail.

2. "When two applications are presented at the same time, either in person or by mail, they are considered simultaneous.

"Applications must be presented during office hours. Land offices are open for public business from 9 a. m. until 4:30 p. m. No original business, however, will be accepted after 4 o'clock p. m."

3. "Proper sums of money required by law to be paid at time of filing must accompany the application. Applications cannot be presented at the land office to be filed at some subsequent date. The land office will not hold land unless there is a legal application presented therefor."

4. "Applications to enter tendered in person, or sent through the mail, should be acted upon in the actual order of arrival or presentation in the local office; and the refusal of said office to observe such order of precedence will not defeat the right of an applicant to have his application subsequently treated as though acted upon in its proper order."

"The fact that the office cannot act upon the application on account of pressure of business will not alter the above rule."

Lewis v. Morse, 27 L. D. 113.

Mary v. Pierce, 28 L. D. 48.

5. "Where a relinquishment was received by mail but the letter presenting it was not opened by the local office for some time afterwards, the relinquishment is to be regarded as filed at the moment of the receipt of the letter containing it."

Wm. C. Young, 2 L. D. 326.

**SIMULTANEOUS APPLICATION.****REGULATIONS OF THE DEPARTMENT.**

The regulations of the Department concerning simultaneous applications are as follows:

"In the case of simultaneous application to enter the same tract of land under homestead laws, the rule is as follows:

1. Where another party has improvements on the land, the right of entry should be awarded to the highest bidder;

2. Where one has actual settlement and improvements and the other has not, it should be awarded to the actual settler;

3. Where both allege settlement and improvements, an investigation must be had and the right of entry awarded to the one who shows prior settlement and substantial improvements so as to be a notice on the ground of any competitor."

(See Report of General Land Office for 1866, page 19. Also case of Helfrich vs. King, 3 Copp's L. O., page 164.)

General Land Office Circular, January 25, 1904.

**SETTLEMENT BEFORE SURVEY.**

Section 3 of the Act of May 14, 1880—21 Statutes, 140—makes provision for protection of settlement rights upon lands prior to survey. For this see Title of Relinquishments, page —.

Settlement rights upon lands prior to survey should be asserted within three months after the filing of plat of survey in the local land office.

See Section 2265, Revised Statutes.

See Section 2274, Revised Statutes.

The Department recognizes the right of the heirs of the deceased entryman.

Where two persons settle upon a piece of land prior to survey, at the same time, the Department has provided three methods by

which the tract of land claimed by two settlers may be acquired. One is by the joint entry and another is to divide the land so as to award to each that portion to which he may be entitled. While the third is to award the land to the highest bidder. It frequently happens that two settlers claim a portion of a given forty acre tract and the rights of each may be determined by the fence which divides the respective claims of the parties, or by other means which determine that portion of the forty acres to which each may be entitled.

Under such circumstances an entryman has been allowed to make entry on a forty-acre tract upon filing a written agreement at the local Land Office to convey the portion thereof awarded to the second claimant after patent has been issued.

Consult on this subject the following cases:

Stone vs. Banegas & Holleran, 2 L. D. 104; Miller vs. Stever, 2 L. D. 150; Doyle vs. Dion, 4 L. D. 27; Benart vs. Nicholas, 4 L. D. 519; McKinnon vs. Anderson, 27 L. D. 154, and other cases cited.

Under Sec. 2274 of the Revised Statutes, page —, consult also the following cases: O'Toole vs. Spicer, 20 L. D. 392, and Hopkins vs. Wagner, 21 L. D. 485; Cain vs. Carrier, 36 L. D. 356.

The right of possession of unsurveyed land prior to survey as between two claimants, in which the Government is not a party, may be determined in the courts of the State in which the land is located, and the courts have jurisdiction under what is known as "forcible entry and detainer" or "unlawful detainer." Actions under the procedure of the State courts concerning forcible entry and detainer should not be confused with actions to determine adverse claims to mineral lands.

The matters that determine settlement is the good faith of the settler, the character of the settlement and the physical development of the land, together with his residence and occupancy thereof. The acts of the settler must be of such a nature as tends to reduce the land to his possession and the exercise of ownership over it.

Consult the following cases:

Buchanan vs. Munton, 2 L. D. 186.

Slate vs. Door, 2 L. D. 635.

McLean vs. Foster, 2 L. D. 175.

Boyer vs. Burnell, 2 L. D. 521.

Franklin vs. March, 10 L. D. 582.

Powers vs. Ady, 11 L. D. 175.

Burnett vs. Crow, 5 L. D. 372.

Howden Piper Case, 3 L. D. 162 and 294.

Under the rule announced in Allen vs. Price, regulating the disposition of lands subject to the Contestant's Preferred right of entry, an application tendered by a stranger to the record during the period accorded to the contestant for the exercise of his right to hold in abeyance under said rule, will take effect on the land covered thereby not taken by the contestant to the exclusion of a subsequent application of another therefor.

For provisions and right of entry see Contest:

State of California vs. Reeves, 22 L. D. 203.

Mayers vs. Dyer, 21 L. D. 187.

Application to enter and file subject to contestant's preferred right of entry take precedence in the order of filing if the contestant fails to exercise his privilege.



Residence on public land with no intention to acquire title thereto under the settlement laws, accords no right against subsequent entry and settlement.

Gaylor vs. Randle, 18 L. D. 187.

As to when the rights of applicants attach to lands, see case of Powell vs. Puff, 24 L. D. 181.

Stewart vs. Peterson, 28 L. D. 515.

Also table of circulars, regulations and instructions.

Applications to enter tendered in person or sent through the mail should be acted upon in the actual order or arrival and presentation at the Local Office; and the refusal of said office to observe such order of precedence will not defeat the right of the applicant to have his application subsequently considered as though acted upon in its proper order.

Lewis vs. Morris, 27 L. D. 113.

See 39 L. D. 409.

One asserting prior settlement as against the application of another, suspended because of the closing of the local office, must, in order to maintain his alleged claim, continue residence upon the land pending the determination of the question of superior right.

Pounder vs. Allen, 39 L. D. 348.

Where a tract of unsurveyed land within the primary limits of a railroad grant was at the date of definite location of the road in good faith occupied by a qualified homestead settler and by fences and connected and continuous occupancy or right passed from one settler to another down to date of filing for township plat of survey, the rights of the settler are superior to the claim of the company under its grant.

Curry vs. Central Pacific R. R. Co., 39 L. D. 5.

Circular of November 3, 1909, concerning application and selections for filing and location on unsurveyed lands provides as follows:

#### **APPLICATIONS AND SELECTIONS FOR AND FILINGS AND LOCATIONS UPON UNSURVEYED LANDS.**

[Circular.]

Department of the Interior,  
General Land Office,  
Washington, D. C., November 3, 1909.

Registers and Receivers, United States Land Offices.

Gentlemen: To remedy the confusion and uncertainty arising from applications and selections for and filings and locations upon unsurveyed public lands, you will hereafter reject any such application, selection, filing, or location, under whatsoever law permitted, unless it conforms to the following rules:

1. It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, water courses, or other natural objects will not be permitted.



2. The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, an affidavit must be filed setting forth a valid reason therefor.

3. The address of the claimant must be given, and it shall be the duty of the register and receiver, upon the filing of the township plat in their office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within thirty days. In default of action by the party notified the register and receiver will promptly adjust the claim and report their action to the General Land Office.

4. Notice of the application, selection, filing, or location, describing the land as directed in Rule 1, must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting therefor filed with the application, selection, filing, or location, as the case may be.

5. Wherever, under existing regulations, notice of such application, selection, filing, or location is required to be posted elsewhere than upon the land and published in a newspaper, the description of the tract in the posted and published notice must conform to the requirements of Rule 1.

Very respectfully,

FRED DENNETT,  
Commissioner.

Approved:

R. A. BALLINGER, Secretary.

### SETTLEMENT ON SCHOOL LAND.

A claimant making settlement on unsurveyed land prior to survey in the field, which proves to be school land after the survey has been accepted, has a superior right to that of the State. There are many decisions of the Department sustaining such settlements.

### ISLANDS.

Islands may be surveyed upon application to the Surveyor General of the Public Land State in which such island may be located.

Forms and instructions concerning such matters should be obtained from such Surveyor Generals.

See 32 L. D. 474.

### ASSIGNMENTS.

In the instructions of October 11, 1911, to the Register and Receiver of the United States Land Office at Belle Fourche, South Dakota, in reference to transfer made by purchasers of lots on time payments, the Secretary said: \* \* \* "The Department will not recognize any one but the original purchaser, and will issue all papers necessary to the completion of title and also the patent in his name."

Under date of October 28, 1911, the Commissioner of the General Land Office issued instructions upon the above regulation as follows: "This decision is applicable to lots in all townsites where they may be purchased and paid for in installments, and you will be governed thereby in all such cases."

Passing upon this matter January 11, 1912, the Commissioner of the General Land Office said:

"A patent issued in the name of the original purchaser will inure to the benefit of his transferee, whoever he may be, which will fully protect all parties claiming under the purchase, and the Government by such course will be relieved from all unnecessary responsibility of ascertaining in each instance in whom the right to a patent is vested and to issue the patent accordingly."

Speaking of townsite lots, in his instructions of November 29, 1911, the Secretary said: \* \* \* "A purchaser of lots in said townsites acquires a property right that he may, prior to the com-

pletion of his right to patent, transfer by deed, and such transferee may perform all the acts necessary to the completion of title."

The above instructions apply in all cases of lands sold, either on a cash or installment basis. The same applies to transfers of Crow, Rosebud, Uintah and other Indian lands which have been sold under proclamation of the President, or under instructions of the Department.

In cases where purchases were made for the benefit of minors, the right to transfer the same will depend upon the law of the State in which such lands may be situated.

Payments may be made by the assignee, in which event a notation showing the name of the original purchaser and by whom the remittance is made will appear upon the receipt.

For Assignments Coal Lands see page 187.

For Assignments Desert Entries see page 274.

For Assignments Water Rights Reclamation Protests see p. 486.

For Relinquishment all classes of entries see pp. 345, 349.

See, also, Desert Lands and Relinquishments; Indian Lands; Town Lots.

**CIRCULAR RELATIVE TO ASSIGNMENT OF HOMESTEAD ENTRIES  
WITHIN RECLAMATION PROJECTS, AMENDING CIRCULAR OF  
SEPTEMBER 13, 1910.**

Department of the Interior,  
Washington, December 17, 1910.

Registers and Receivers,

United States Land Offices.

Project Engineers,

United States Reclamation Service.

Sirs: The circular entitled "Instructions under Reclamation Acts of June 11, 23, and 25, 1910, relative to entry, assignment, leave of absence, etc., approved September 13, 1910, is hereby amended by substituting for that portion of the circular relating to the Act of June 23, 1910, *supra*, the following:

"The Act approved June 23, 1910, entitled 'An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years the same as though said entry had been made under the original Homestead Act' (Public, No. 243), reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have or shall make homestead entries within reclamation projects under the provisions of the act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: Provided, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act.

"Under the provisions of this Act persons who have made or may make homestead entries subject to the Reclamation Act may assign their entries in their entirety at any time after filing in this



office satisfactory proof of residence, improvements, and cultivation for the five years required by the ordinary provisions of the homestead law. The Act also provides for the assignment of homestead entries in part, but such assignments, if made prior to the establishment of farm units, must be made in strict accordance with the legal subdivisions of the public survey, and if made after such units are established must conform thereto, except as hereinafter provided.

"In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder. Assignments of parts of established farm units will be allowed only after report by the project engineer to the Department that the farm unit as proposed to be divided or as capable of adjustment in connection with surrounding lands will make two or more units each capable of supporting a family, the report to be accompanied with plats describing the amended farm units. Such plats will be submitted by the Director of the Reclamation Service to the Secretary of the Interior for approval, and, when approved by him, will be forwarded to the Commissioner of the General Land Office for transmission to the local land office with appropriate instructions; the assignment of the lands embraced within one of the farm units so established to be allowed only after a proper showing of the qualifications of the assignee, the filing of water-right application by him, and the payment of any amounts due upon the lands covered by the assignment under the terms of the public notices issued in connection with the project in which the lands are situated.

"If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project, by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after the completion of the survey.

"No assignment of a portion of any farm unit will be recognized by the Department as modifying any approved water-right application, or releasing any part of the farm unit as originally established from any portion of the charges announced against it until after the approval of the amended farm unit by the Secretary of the Interior, the filing of evidence of the qualifications of the assignee, the receipt of a proper water-right application, and of the payments due upon the land included in the assignment.

"Assignments under this Act must be made expressly subject to the limitations, charges, terms, and conditions of the reclamation Act, and, inasmuch as that Act limits the right of entry to one farm unit, the assignee must present a showing in the form of an affidavit, duly corroborated, that he has not acquired title to and is not claiming any other farm unit or entry under the reclamation Act.



"Assignments made and filed in your office in accordance with these regulations must be noted on your records and forwarded to the General Land Office for consideration, and, if approved, the assignees in each case will be required to make payment of the water-right charges and submit proof of reclamation as would the original entryman and, after proof of full compliance with the law, may receive a patent for the land."

Very respectfully,

Fred Dennett,  
Commissioner.

Approved.

R. A. Ballinger,  
Secretary of the Interior.

December 17, 1910.

# FORM OF ASSIGNMENT DESERT ENTRY.

Know All Men by These Presents: That I, ....., of ....., for and in consideration of the sum of ..... Dollars, in lawful money of the United States of America, to me in hand paid by ....., of ....., the receipt whereof is hereby acknowledged, do by these presents sell, assign, transfer and set over unto the said ..... all my right, title, and interest now acquire, or which I may hereafter in the perfection of the title all those certain lands now held and embraced in my desert land entry serial No. ...., made ..... at the United States District Land Office at ....., State of ....., on the ..... day of ....., ....., for the following described lands, to-wit: (Here describe lands.)

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also possession, claim and demand whatsoever, as well in law and in equity and to every part and parcel thereof.

To have and to hold the same unto the said ....., his heirs, executors, administrators and assigns, subject nevertheless to the covenants, conditions and payments required to me made under the laws of the United States, and Departmental Regulations thereunder concerning Desert Land entries and final proofs thereunder, all of which the assignee submits and agrees to, and with such full understanding accepts this assignment.

And I hereby fully authorize and empower the said ..... to receive patent to said land upon the full and complete compliance with the law and regulations aforesaid, in the same manner, to all intents and purposes as I myself might or could do, were these presents not executed.

In witness whereof, I have hereunto set my hand and seal this ..... day of ....., .....

..... (Seal.)  
Signed, sealed and delivered in the presence of—

.....  
.....  
Witnesses.

State of ....., County of ....., ss.

On this ..... day of ....., A. D. ...., before me, ..... (state name of office taking acknowledgment) in and for County and State aforesaid, personally appeared ....., known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same freely and voluntarily, for the purposes therein named.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

## EXECUTION. JUDGMENT.

Homestead Lands Not Subject to for Satisfaction of Debts Contracted Prior to Patent.

Section 2296 of the Revised Statutes provides:

"Sec. 2296. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of patent therefor."

See decisions cited under this section in table of revised statutes cited and construed.

See mortgages.

See alienation.

## **CANALS, DITCHES, AND RESERVOIRS.**

1. General statement.
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25. Requirements (oil pipe lines in Colorado and Wyoming).
26. General provisions. (Reservoirs for watering stock).
27. No lands sold.
28. Declaratory statement.
29. Application by corporation.
30. Action by the Land Department on declaratory statements, and size, location and number of reservoir sites.
31. Construction.
32. Map and field notes of constructed reservoir.
33. Notations by local land officers.
34. Approval.
35. Annual proof of maintenance.
36. Reservoir on unsurveyed land.
37. General statement. (Telegraph and telephone lines, electrical plants, canals, and reservoirs.)
38. Nature of grant.
39. Application for right of way through national forests.
40. Applications for right of way through land outside of national forests.
41. Buildings to be platted on map in main drawing and in separate drawing.
42. Unsurveyed lands.
43. National parks.
44. Indian reservations.
45. Notations and procedure.
46. Rights of way for tramroads. (Tramroads.)
47. General statement. (Right of way through national forests for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals for municipal or mining purposes.)
48. Nature of grant.
49. Preparation of applications.
50. Water-plant structures.
51. Stipulation and bond.

- 52. Notation by register.
- 53. Right of way through unsurveyed land.
- 54. Circular 108. Addenda.

## REGULATIONS FOR RIGHTS OF WAY OVER PUBLIC LANDS AND RESERVATIONS.

### CANALS, DITCHES, AND RESERVOIRS.

1. General Statement.—Sections 18, 19, 20 and 21 of the Act of Congress approved March 3, 1891 (26 Stat., 1095), entitled "An Act to repeal timber-culture laws, and for other purposes," grant the right of way through the public lands and reservations of the United States for the use of canals, ditches, or reservoirs heretofore or hereafter constructed by corporations, individuals, or associations of individuals. If the right of way is upon a reservation not within the jurisdiction of the Interior Department, the application must be filed in accordance with these regulations, and will be submitted to the Department having jurisdiction. A map and field notes of the portion within any reservation, except in the case of a national forest, must be submitted in addition to the duplicates required herein. All maps and field notes must conform to the provisions of this circular.

The sections above noted read as follows:

Sec. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation, and duly organized under the laws of any State or Territory, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: Provided, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the Department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

Sec. 19. That any canal or ditch company desiring to secure the benefits of this act shall; within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Sec. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior and with the register of the land office where said land is located a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: Provided, That if any section of said canal or ditch shall not



be completed within five years after the location of said section the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

Sec. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

2. Material on Adjacent Lands.—The word adjacent, as used in section 18 of the Act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L. D., 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L. D., 566). These decisions were rendered under the railroad right-of-way Act, and are applied to this Act since the words are the same in both.

Section 2 of the Act approved March 11, 1898 (30 Stat., 404), entitled "An Act to amend an Act to permit the use of the right-of-way through public lands for tramroads, canals, and reservoirs, and for other purposes," authorizes the use of rights of way granted under the Act of 1891 for purposes subsidiary to the main purpose of irrigation. The language of said section is as follows:

Sec. 2. That rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the act entitled "An act to repeal timber culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation.

3. Control of Water.—While these Acts grant rights of way over the public lands necessary to the maintenance and use of ditches, canals, and reservoirs, the control of the flow and use of the water is, so far as this Act is concerned, vested in the States or Territories, the jurisdiction of the Department of the Interior being limited to the approval of maps carrying the right of way over the public lands. If the right of way applied for under this Act in any wise involves the appropriation of natural sources of water supply, the damming of rivers, or the use of lakes, the maps should be accompanied by proof that the plans and purposes of the projectors have been regularly submitted and approved in accordance with the local laws or customs governing the use of water in the State or Territory in which such right of way is located. No general rule can be adopted in regard to this matter. Each case must rest upon the showing filed.

4. Nature of Grant.—The right granted is not in the nature of a grant of lands, but is a base or qualified fee. The possession and right of use of the lands are given for the purposes contemplated by law, but a reversionary interest remains in the United States, to be conveyed by it to the person to whom the land may be patented, whose rights will be subject to those of the grantee of the right of way. All persons settling on a tract of public land, to part of which right of way has attached for a canal, ditch, or reservoir, take the land subject to such right of way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location,

his right is superior, and he is entitled to such reasonable measure of damages for right of way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of this Department. Section 21 of the Act of March 3, 1891, provides that the grant of a right of way for a canal, ditch, or reservoir does not necessarily carry with it a right to the use of land 50 feet on each side, but only such land may be used as is necessary for construction, maintenance and care of the canal, ditch, or reservoir. The width is not specified.

5. Right of Way Through National Forest.—Whenever a right of way is through a national forest, the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest. No construction will be allowed in a national forest until an application for right of way has been regularly filed and approved by the Secretary of the Interior, or unless permission for such construction work has been specifically given.

6. Right of Way Through Proposed National Forest.—If the right of way is through land within a proposed national forest, the applicant must file the following stipulations under seal:

(a) That the proposed right of way is not so located as to interfere with the proper occupation and use of the reservation by the Government.

(b) That the applicant will cut no timber from the reserve outside the right of way, and will remove no timber from the land within the right of way except such as is rendered necessary for the proper use and enjoyment of the privilege for which application is made.

(c) That he will remove from the reservation, or destroy, under such safeguards as may be deemed necessary by the General Land Office, all standing, fallen, and dead timber, as well as all tops, lops, brush, and refuse cuttings on the right of way, for such distance on each side of the central line as may be required by the General Land Office to protect the forest from fire.

(d) That the applicant will furnish free of charge such assistance in men and material for fighting fires as may be spared without serious injury to the applicant's business.

(e) That should any portion of said right of way be included in a National Forest, the applicant will build new roads, trails, and crossings, as required by the Forest Service, in case any roads or trails are destroyed or intercepted by construction work or flooding upon said right of way.

The applicant will also be required to give bond to be approved by the Commissioner of the General Land Office, stipulating that the United States will be compensated "for any and all damage to the public lands, timber, natural curiosities, or other public property on such reservation, or upon the lands of the United States, by reason of such use and occupation of the reserve, regardless of the cause or circumstances under which such damages may occur." A bond furnished by any surety company that has complied with the provisions of the Act of August 13, 1894 (28 Stat., 279), will be accepted. The amount of the bond can not be fixed until the application has been submitted to the General Land Office, when a form of bond will be furnished and the amount thereof fixed.



7. Right of Way Partly on Unsurveyed Land.—Canals, ditches, or reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to these regulations, but the approval will only relate to that portion traversing the surveyed lands. (For right of way wholly on unsurveyed land, see section 17.)

8. Application by Corporation.—An incorporated company desiring to obtain the benefits of the law must file the papers and maps specified below with the register of the land district in which the canal, ditch, or reservoir is to be located. These papers and maps will be forwarded to the General Land Office, and, after examination, they will be submitted to the Secretary of the Interior with recommendations as to their approval:

(a) A copy of its articles of incorporation, duly certified to by the proper officers of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(b) A copy of the State or Territorial law under which the company was organized (if it was organized under State or Territorial law), with certificate of the Governor or Secretary of State or Territory, under seal, that the same was the law at the date of incorporation. (See paragraph k of this section.)

(c) If the State or Territorial law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territorial officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(d) When a company is operating in a State or Territory other than that in which it is incorporated, it must submit the certificate of the proper officer of the State or Territory that it has complied with the laws of that State or Territory governing foreign corporations to the extent required to entitle the company to operate in such State or Territory.

No forms are prescribed for the above portion of the "due proofs" required, as each case must be governed to some extent by the laws of the State or Territory.

(e) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with construction according to the existing law of the State or Territory in which it is incorporated, and that the copy of the articles filed is true and correct. (See Form 1, p. 112.)

(f) A true list, signed by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (See form 2, p. 112.)

(g) A copy of the company's title or right to appropriate the water needed for its canals, ditches, and reservoirs, certified as required by the State or Territorial laws. If the miner's inch is the unit used in such title, its equivalent in cubic feet per second must be stated. If the right to appropriate the water has not been adjudicated under the local laws, a certified copy of the notice of appropriation will be sufficient. If the notice of appropriation is accompanied by a map of the canal or reservoir it will not be necessary to furnish a copy of the map where the notice describes the location sufficiently to identify it with the canal or reservoir



for which the right-of-way application is made. If the water-right claim has been transferred a number of times it is not necessary to furnish a copy of each instrument of transfer; an abstract of title will be accepted.

(h) A copy of the State or Territorial laws governing water rights and irrigation, with the certificate of the Governor or Secretary of State or Territory that the same is the existing law. (See paragraph k of this section.)

(i) A separate statement as follows: The amount of water flowing in the stream supplying the canal, ditch, or reservoir, at the point of diversion or damming, during the preceding year or years. For this purpose it will be necessary to give the maximum, minimum, and average flow in cubic feet per second for each month during the period for which records are available. In cases of reservoirs of 5,000 acre-feet capacity, or more, or of ditches of 100 cubic feet per second capacity, or more, the amount of water, in acre-feet, available for storage or diversion, and the amount of water which it is proposed to divert annually from the stream or streams affected, with the period during which the water is to be diverted. The length, cross-section, grade, and capacity of the ditches to be constructed and the characteristics of each ditch as affecting the flow of water. The surveyor or engineer of the applicant must certify to the above, and must certify that all available records (specifying them), official and otherwise, have been consulted. If there is no well-defined flow which can be measured, or if there is no record of the flow, the area of the water-shed, average annual rainfall, and estimated run-off at the point of diversion or damming must be given.

(j) Maps, field notes, and other papers, as hereinafter required.

(k) If certified copies of the existing laws regarding corporations and irrigation, and of new laws as passed from time to time, be forwarded to the General Land Office by the Governor or Secretary of the State or Territory, the applicant may file, in lieu of requirements of paragraphs b and h of this section, a certificate of the Governor or Secretary of State, under seal, that no change has been made since a given date, not later than that of the laws last forwarded.

9. Application by Individuals.—Individuals or associations of individuals making applications for right of way are required to file the information called for in paragraphs g, h, i, and j of the preceding section. Associations of individuals must, in addition, file their articles of association; if there be none, the fact must be stated over the signature of each member of the association.

10. Field Notes.—Field notes of the surveys must be filed in duplicate, separate from the map, and in such form that they may be folded for filing. Complete field notes should not be placed on the map, but the following data should be shown thereon: (a) The station numbers where deflections or changes of numbering occur; (b) station numbers with distances to corners at points where the lines of the public surveys are crossed, and (c) the lines of reference of initial and terminal points, with their courses and distances. Typewritten field notes with clear carbon copies are preferred, as they expedite the examination of applications. The field notes should contain, in addition to the ordinary records of

surveys, the data called for in this and in the following sections. They should state which line of the canal was run—whether middle or a specified side line. The stations or courses should be numbered in the field notes and on the map. The record should be so complete that from it the surveys could be accurately retraced by a competent surveyor with proper instruments. The field notes should show whether the lines were run on the true or the magnetic bearings, and if run on magnetic bearings the declination of the needle and date of determination must be stated. The kind and size of the instrument used in running the lines and its minimum reading on the horizontal circle should be noted. The line of survey should be that of the actual location of the proposed ditch and, as exactly as possible, the water line of the proposed reservoir. The method of running the grade lines of canals and the water lines of reservoirs must be described.

11. Maps.—The maps filed must be drawn on tracing linen in duplicate, and must be strictly conformable to the field notes of the survey. They must be filed in the land office for the district in which the right of way is located; but if the right of way is located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. Other canals, ditches, laterals, or reservoirs with which connections are made must be shown, but distinguished from those for which right of way is desired by ink of a different color.

The scale of the map should be 2,000 feet to the inch in the case of canals or ditches and 1,000 feet to the inch in the case of reservoirs. The scale may, however, be 1,000 feet to the inch in the case of canals or ditches and 500 feet to the inch in the case of reservoirs when such a scale is absolutely necessary to properly show the proposed works.

All subdivisions of the public surveys on the map should have their entire boundaries drawn, and on all lands affected by the right of way the smallest legal subdivisions (40-acre tracts and lots) must be shown. The section, township, and range must be clearly marked on the map.

The map must bear a statement of the width of each canal, ditch, or lateral high-water line. If not of uniform width, the limits of the deviations must be clearly defined on the map. The field notes should record the changes in such a manner as to admit of exact location on the ground. In the case of a pipe line, the diameter of the pipe should be stated. The map must show the source of water supply.

In applications for right of way for a reservoir, the capacity of the reservoir must be stated on the map in acre-feet (i. e., the number of acres that will be covered to a depth of 1 foot by the water that the reservoir will hold; 1 acre-foot is 43,560 cubic feet). The map must show the source of water supply for the reservoir and the location and height of the dam.

12. Initial and Terminal Points.—The termini of a canal, ditch, or lateral should be fixed by reference of course and distance to the nearest existing corner of the public survey. The initial point of the survey of a reservoir should be fixed by reference of course and distance to the nearest existing corner outside the reservoir by a line that does not cross an area that will be covered with water



when the reservoir is in use. The map, field notes, engineer's affidavit, and applicant's certificate (Forms 3 and 4) should each show these connections.

13. **Connections on Unsurveyed Land.**—When either terminal of a canal, ditch, or lateral is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant, and the single bearing and distance from the terminal point to the corner must be computed and noted on the map, in the engineer's affidavit, and in the applicant's certificate (Forms 3 and 4). The notes and all data for the computation of the traverse must be given in the field notes.

14. **Connections With Monuments on Unsurveyed Land.**—When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. The field notes must give an accurate description of the mark and full data of the traverse as required above. The engineer's affidavit and applicant's certificate (Forms 3 and 4) must state the connections. These monuments are of great importance.

15. **Forms for Canal, etc., on Unsurveyed Land.**—When a canal, ditch, or lateral lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately described in the field notes and in Forms 3 and 4 by connections of termini, length, and width, as though each portion were independent. (See secs. 12, 13, and 14.)

16. **Forms for Reservoir on Unsurveyed Land.**—When a reservoir lies partly on unsurveyed land its initial point must be noted, as required for the termini of ditches in section 12. The reference line must not cross an area that will be covered with water when the reservoir is in use. The areas of the several parts lying on surveyed or unsurveyed land must be separately noted on the map, in the field notes, and in Forms 3 and 4.

17. **Right of Way Wholly on Unsurveyed Land.**—Maps showing canals, ditches, or reservoirs wholly upon unsurveyed lands may be received and placed on file in the General Land Office and the local land office of the district in which the land is located, for general information. The date of filing will be noted thereon; but the maps will not be submitted to nor approved by the Secretary of the Interior, as the Act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified by the Act granting the right of way. If these maps are in all respects regular when filed, they will receive the Secretary's approval. In filing such maps the initial and terminal points will be fixed as indicated in sections 13 and 14.

18. **Connections With Public Survey Corners.**—Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. In the case of a reservoir the distance must not be measured across an area which will be covered with water when

the reservoir is in use. The map of the canal, ditch, or reservoir must show these distances, and the field notes must give the points of intersection and the distances. When corners are destroyed by the canal or reservoir, proceed as directed in sections 19 and 20.

19. Witness Monuments for Destroyed Public Survey Corners.—Whenever a corner of the public survey will be covered by earth or water, or otherwise rendered useless, marked monuments (one on each side of destroyed corner) must be set on each township or section line passing through, or one on each line terminating at, said corner. These monuments must comply with the requirements for witness corners of the Manual of Surveying Instructions issued by the General Land Office, and must be at such distance from the works as to be safe from interference during the construction and operation of the same. If two or more consecutive corners on the same line are destroyed, the monument shall be set as required in the Manual for the nearest corner on that line to be covered.

20. Method of Establishing Witness Monuments.—The line on which such monument is set will be determined by running a random line from the corner to be destroyed to the first existing corner on the line to be marked by the monument, a temporary mark being set on the random line at the distance of the proposed monument. If the random line strikes the corner run to, the monument will be established at the place marked; if the random line passes to one side of the corner, the north and south or east and west distance to it will be measured and the true course calculated. The proper correction of the temporary mark will then be computed and a permanent monument set in the proper place. The field notes for the surveys establishing the monuments must be in duplicate and separate from those of the canal or reservoir, and must be certified by the surveyor under oath. They must comply with the form of field notes prescribed in the Manual of Survey Instructions issued by the General Land Office.

When application is made for a canal or reservoir which is constructed and in operation, the method to be adopted in setting the monuments must be governed by the special features of each case and left to the judgment of the surveyor. No field notes will be accepted unless the lines on which the monuments are set conform to the lines shown by the field notes of the survey as made originally under the direction of this office, and unless the notes are in such form that the computation can be verified and the lines retraced on the ground.

21. Affidavit and Certificate Required.—The engineer's affidavit and applicant's certificate must both designate by termini (as in sections 12 to 17, inclusive) and length each canal, ditch, or lateral, and by initial point and area each reservoir shown on a map, for which right of way is asked. This affidavit and this certificate (changed where necessary when an application is made by an individual or association of individuals) must be written on the map in duplicate. Applicants under the Act of March 3, 1891, must include in the certificate (Form 4) the statement: "And I further certify that the right of way herein described is desired for the main purpose of irrigation." (See Forms 3 and 4, pages 25 and 26.) No changes or additions are allowable in the substance



of these forms, except when the facts differ from those assumed therein.

22. **Notation on Maps and Records.**—When maps are filed, the Register will note on each the name of the land office and the date of filing over his written signature. Notations will also be made on the records of the local land office, as to each unpatented tract affected, that application for right of way for a canal (or reservoir) is pending, giving date of filing and name of applicant. The Register will certify on each map, over his written signature, that unpatented land is affected by the proposed right of way. The maps and field notes in duplicate, and any other papers filed in connection with the application, will then be promptly transmitted to the General Land Office with report that the required notations have been made on the records of the local land office. Any valid right existing at the date of the filing of the right of way application will not be affected by the filing or approval thereof. (See sec. 4.) If no unpatented land is involved in the application, the local officers will reject it, allowing the usual right of appeal.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the canals, ditches, or reservoirs, as laid down on the map. They will also note the approval in ink, on the tract book, opposite each tract marked as required above and report to the General Land Office that notations have been made and the applicant notified of approval.

23. **Evidence of Construction.**—When the canal, ditch, or reservoir is constructed, an affidavit of the engineer and certificate of the applicant (Forms 5 and 6) must be filed in the local office, in duplicate, for transmission to the General Land Office. No new map will be required, unless there are deviations from the right of way previously approved, either before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended or bear a statement describing them, and the location must be described in the forms as the amended survey and the amended definite location. In such cases the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the Secretary of the Interior. If the canal or reservoir has been constructed on the location originally approved, and is to be used until the canal or reservoir on the amended location is ready for use, the relinquishment may be made to take effect upon the completion of the canal or reservoir on the amended location.

24. **Right of Way on Segregated Reservoir Sites.**—The Act approved February 26, 1897 (29 Stat., 599), entitled "An Act to provide for the use and occupation of reservoir sites reserved," permits the approval of applications under the above Act of 1891 for right of way upon reservoir sites reserved under authority of the Acts of October 2, 1888 (25 Stat., 505, 526), and August 30, 1890 (26 Stat., 371, 391). The text of the Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all reservoir sites reserved

or to be reserved shall be open to use and occupation under the right-of-way act of March third, eighteen hundred and ninety-one. And any State is hereby authorized to improve and occupy such reservoir sites to the same extent as an individual or private corporation, under such rules and regulations as the Secretary of the Interior may prescribe: Provided, That the charges for water coming in whole or part from reservoir sites used or occupied under the provisions of this act shall always be subject to the control and regulation of the respective States and Territories in which such reservoirs are in whole or part situate.

When an application is made under this Act a reference to it should be added to Forms 4 and 6. In other respects the application should be prepared according to the preceding regulations.

#### **OIL PIPE LINES IN COLORADO AND WYOMING.**

25. Requirements.—The Act approved May 21, 1896 (29 Stat., 127), entitled "An Act to grant right of way over the public domain for pipe lines in the States of Colorado and Wyoming," is similar in its requirements to the right-of-way Act of March 3, 1891, and the preceding regulations furnish full information as to the preparation of the maps and papers. Applicants will be governed thereby so far as they are applicable.

The text of the Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands of the United States situate in the State of Colorado and in the State of Wyoming outside of the boundary lines of the Yellowstone National Park, is hereby granted to any pipe-line company or corporation formed for the purpose of transporting oils, crude or refined, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by said pipe line and twenty-five feet on each side of the center of line of the same; also the right to take from the public lands adjacent to the line of said pipe line material, earth, and stone necessary for the construction of said pipe line.

Sec. 2. That any company or corporation desiring to secure the benefits of this act shall within twelve months after the location of ten miles of the pipe line if the same be upon surveyed lands; and if the same be upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its line, and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way.

Sec. 3. That if any section of said pipe line shall not be completed within five years after the location of said section the right herein granted shall be forfeited, as to any incomplete section of said pipe line, to the extent that the same is not completed at the date of the forfeiture.

Sec. 4. That nothing in this act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

#### **RESERVOIRS FOR WATERING STOCK.**

26. General Provisions.—The Act approved January 13, 1897 (29 Stat., 484), entitled "An Act providing for the location and purchase of public lands for reservoir sites," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such live stock, and shall have control of such reservoir,



under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding one hundred and sixty acres, so long as such reservoir is maintained and water kept therein for such purposes: Provided, That such reservoir shall not be fenced and shall be open to the free use of any person desiring to water animals of any kind.

Sec. 2. That any person, live-stock company, or corporation desiring to avail themselves of the provisions of this act shall file a declaratory statement in the United States land office in the district where the land is situated, which statement shall describe the land where such reservoir is to be or has been constructed; shall state what business such corporation is engaged in; specify the capacity of the reservoir in gallons, and whether such company, person, or corporation has filed upon other reservoir sites within the same county; and if so, how many.

Sec. 3. That at any time after the completion of such reservoir or reservoirs which, if not completed at the date of the passage of this act, shall be constructed and completed within two years after filing such declaratory statement, such person, company, or corporation shall have the same accurately surveyed, as hereinafter provided, and shall file in the United States land office in the district in which such reservoir is located a map or plat showing the location of such reservoir, which map or plat shall be transmitted by the register and receiver of said United States land office to the Secretary of the Interior and approved by him, and thereafter such land shall be reserved from sale by the Secretary of the Interior so long as such reservoir is kept in repair and water kept therein.

Sec. 4. That Congress may at any time amend, alter, or repeal this act.

27. No Lands Sold.—Although the title indicates that lands are to be sold for reservoir sites, the Act does not provide for the sale of any lands, and therefore no lands can be sold under its provisions. The Act, however, directs the Secretary of the Interior to reserve the lands from sale after the approval of the map showing the location of the reservoir. Homestead entries are allowed for lands embraced in reservoir declaratory statements, prior to the completion of the reservoir and the approval of the map, subject, however, to cancellation if the reservoir is completed within the time specified by the Act.

28. Declaratory Statement.—Any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock, desiring to obtain the benefits of the Act must file a declaratory statement in the United States Land Office in the district in which the land is located.

29. Application by Corporation.—When the applicant is a corporation there should be filed a copy of its articles of incorporation and proofs of its organization, as required in section 8, paragraphs a, b, c, d, e, f, and k of these regulations. If these papers are filed with the first declaratory statement made by the company, a reference thereto by its number will be sufficient in any subsequent application by the company.

The declaratory statement must be made under oath and should be drawn in accordance with Form 9 (page 27), and must contain the following:

(a) The post-office address of the applicant; the name of the county in which the reservoir is to be or has been constructed; the description by the smallest legal subdivision (40-acre tracts or lots) of the land sought to be reserved which under no circumstances must exceed 160 acres; certificate that the land is not occupied or otherwise claimed; certificate that to the best of the applicant's knowledge and belief the land is not mineral or otherwise reserved; statement of the business of the applicant, which statement shall include full and minute information concerning the extent to which

he is engaged in breeding, grazing, driving, or transporting live stock, the number and kinds of such stock, the place where they are being bred or grazed, whether within an inclosure or upon uninclosed lands, and also the points from which and to which they are being driven or transported; description of the land owned or claimed by the applicant in the vicinity of the proposed reservoir and statement of its amount; certificate that no part of the land sought to be reserved is or will be fenced, that all the land will be kept open to the free use of any person desiring to water animals of any kind; and that the lands so sought to be reserved are not, by reason of their proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

(b) The location of the reservoir described by the smallest legal subdivisions (40-acre tracts or lots), its area in acres, its capacity in gallons, the source from which water is to be obtained for such reservoir, whether there are any streams or springs within 2 miles of the land sought to be reserved; and if so, where.

(c) The numbers, locations, and areas of all other reservoir sites filed upon by the applicant, especially designating those in the county in which the proposed reservoir is located.

30. Action by the Land Department on Declaratory Statements, and Size, Location, and Number of Reservoir Sites.—When such declaratory statement is filed, the date of filing will be noted thereon over the signature of the officer receiving it, and the statements will be numbered according to order of June 1, 1908. The Register will make the usual notations on the records, in pencil, under the designation of "Reservoir declaratory statement No. —," adding the date of the act. For the filing of such reservoir declaratory statement the local officers will be authorized to charge the usual fees. (Sec. 2238, U. S. Rev. Stat.) The local officers will forward the declaratory statement with the regular monthly returns, with abstracts, in the usual manner. In acting upon these statements the following general rules will be applied:

(a) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity not more than 80 acres can be reserved. For a reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more 160 acres may be reserved.

(b) Not more than 160 acres shall be reserved for this purpose in any section.

(c) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(d) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(e) The local officers will reject any reservoir declaratory statement not in conformity with these rules.

(f) Lands so reserved shall not be fenced, but shall be kept open to the free use of any person desiring to water animals of any kind. If lands so reserved are at any time fenced or otherwise



inclosed, or if they are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(g) Notwithstanding the action of the local officers in accepting any such declaratory statement, the Commissioner of the General Land Office will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

31. Construction.—The reservoir must be completed and constructed within two years after the filing of the declaratory statement; otherwise the declaratory statement will be subject to cancellation.

32. Map and Field Notes of Constructed Reservoir.—After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped, in accordance with the instructions of sections 10 to 22, inclusive, so far as they are applicable. The map and field notes, which are not to be prepared in duplicate, must be filed in the proper local office. The map must bear Forms 10 and 11 (p. 116), and the field notes must be sworn to by the surveyor.

33. Notations by Local Land Officers.—When the map, field notes, and other papers have been filed in the local office, the date of filing will be noted thereon and the proper notations will be made on the local office records, as in the case of the declaratory statement. Local officers will then promptly forward the maps and papers to the General Land Office.

34. Approval.—The map and papers will be examined in the General Land Office to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory they will be submitted to the Secretary of the Interior, and upon approval the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the Act. Upon the receipt of notice of such reservation from the General Land Office the local officers will make the proper notations on their records and report the making thereof promptly to the General Land Office.

35. Annual Proof of Maintenance.—In order that this reservation shall be continued it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required during the month of January of each year to file in the local office an affidavit to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the Act have been complied with. Form 12 (p. 29) will be used for this affidavit. Upon failure to file such affidavit steps will be taken looking to the revocation of the reservation of the lands.

36. Reservoir on Unsurveyed Land.—If the reservoir is located on unsurveyed land, the declaratory statement may be filed, the lands being described as closely as practicable.

The widely different conditions to be considered in the operations proposed by the applicants make it impossible to formulate regulations that will furnish the data necessary in all cases. Additional information will be called for whenever necessary for the proper consideration of any particular case.

**TELEGRAPH AND TELEPHONE LINES, ELECTRICAL PLANTS, CANALS, AND RESERVOIRS.**

37. General Statement.—The Act of February 15, 1901 (31 Stat., 790), entitled "An Act relating to rights of way through certain parks, reservations, and other public lands," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: Provided, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose observation such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: Provided further, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: And provided further, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation or park.

This Act, in general terms, authorizes the Secretary of the Interior, under regulations to be fixed by him, to grant permission to use rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks in California, for every purpose contemplated by Acts of January 21, 1895 (28 Stat., 635), May 14, 1896 (29 Stat., 120), and section 1 of the Act of May 11, 1898 (30 Stat., 404), and for other purposes additional thereto, except for tramroads, the provisions relating to tramroads, contained in the Act of 1895 and in section 1 of the Act of 1898, aforesaid, remaining unmodified and not being in any manner extended.

Although this Act does not expressly repeal any provision of law relating to the granting of permission to use rights of way contained in the Acts referred to, yet in view of the general scope



and purpose of the Act, and of the fact that Congress has, with the exception above noted, embodied therein the main features of the former Acts relative to the granting of a mere permission or license for such use, it is evident that, for purposes of administration, the later Act should control in so far as it pertains to the granting of permission to use rights of way for purposes therein specified. Accordingly all applications for permission to use rights of way for the purposes specified in this Act must be submitted thereunder. Where, however, it is sought to acquire a right of way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the Act of March 3, 1891 (26 Stat., 1095), and section 2 of the Act of May 11, 1898, *supra*, the application must be submitted in accordance with the regulations issued under said Acts. (See pp. 4 to 14, inclusive.)

Application for permission to use the desired right of way through the public lands and parks designated in the Act must be filed and permission must be granted, as herein provided, before any rights can be claimed thereunder.

38. Nature of Grant.—It is to be specially noted that this Act does not make a grant in the nature of an easement but authorizes a mere permit in the nature of a license, which permit may be revoked by the Secretary, or his successor, at any time in his discretion. Further it gives no right whatever to take from public lands, reservations, or parks adjacent to the right of way any materials, earth or stone, for construction or other purposes.

43. National Parks.—Whenever a right of way is through any of the national parks designated in the Act, the applicant must show to the satisfaction of the Department that the location and use of the right of way for the purposes contemplated will not interfere with the uses and purposes for which the park was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file the stipulations and bond required by section 6, but, in case of a telephone line, substitute the following: "That upon completion of the telephone lines they shall be subject to the free use of the park officers for all purposes incident to the administration of the park," for stipulation (c) under said section 6.

Whenever right of way within a park is desired for operations in connection with mining, quarrying, cutting timber, or manufacturing lumber, a satisfactory showing must be made of the applicant's right to engage in such operations within the park. If the application and the showing made in support thereof is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and any permission granted hereunder is also subject to such further and future regulations as may be adopted by the Department. Amended Circular No. 108, May 7, 1912.

39. Applications for Right of Way Through National Forests.—By section 1 of the Act of February 1, 1905 (33 Stat., 628), it is provided:

That the Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and

for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands.

Under this provision it has been determined that the Department of Agriculture is invested with jurisdiction to pass upon all applications under any law of the United States providing for the granting of a permission to occupy and use lands in a national forest, provided this occupation or use is temporary, and will in no wise affect the fee or cloud the title of the United States should the reserve be discontinued.

Therefore, when it is desired to obtain permission to use a right of way over public lands wholly within a national forest, an application should be prepared in accordance with the instructions issued by the Department of Agriculture, and the same filed with the officer in charge of such national forest.

In case the application involves rights and privileges upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer and the other filed in the local land office.

40. Applications for Right of Way Through Land Outside of National Forests.—Where permission to use a right of way over lands wholly outside of national forests is desired, the application must be prepared and filed in accordance with sections 4 to 22, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the Act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit by one of them. If he is not a native-born citizen he must file the usual proofs of naturalization. The applicant must also set forth in the affidavit the purposes for which the right of way is to be used, and must show that he in good faith intends to utilize the same for such purposes.

41. Buildings to Be Platted on Map in Main Drawing and in Separate Drawing.—When application is made for right of way for electrical or water plants, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described in the field notes and forms (7 and 8, p. 27) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The applicant must also file an affidavit setting forth the dimensions and proposed use of each of



the structures, and must show definitely that each one is necessary for a proper use of the right of way for the purposes contemplated in the Act.

42. **Unsurveyed Lands.**—Permission may be given under this Act (February 15, 1901) for rights of way upon unsurveyed lands, maps to be prepared in accordance with the requirements of this circular.

43. See Addenda, page 191.

44. **Indian Reservations.**—Applications for right of way under this Act, all of which is located upon land within an Indian reservation, must be filed with the Commissioner of Indian Affairs. Applications for right of way affecting lands within and without Indian reservations must be filed in the local land office for forwarding to the Commissioner of the General Land Office. Before such applications are transmitted to the Department they will be submitted by the Commissioner of the General Land Office to the Commissioner of Indian Affairs for such action and recommendation as that officer may deem proper in so far as the same pertains to such Indian reservation. Applicants will be required to furnish, in triplicate, so much of the map and field notes as relate to that portion of the right of way within an Indian reservation; and if the application is subsequently granted, one copy of such portion of the map and field notes as pertains to such reservation will be placed on file in the Indian Office. In this connection, attention is directed to the provisions of section 3 of the Act of March 3, 1901 (31 Stat., 1083), which authorizes the granting of permanent rights of way, in the nature of easements, for telegraph and telephone purposes only, through Indian reservations and other Indian lands, upon payment of proper compensation for the benefit of the Indians interested therein. The provisions of the Act of March 3, 1901, and the nature and character of the rights authorized to be secured thereunder differ materially from the provisions of the Act on which these regulations are based and the rights authorized to be conferred thereunder. Applicants, therefore, desiring to secure permanent rights of way through Indian reservations or other Indian lands for telegraph and telephone purposes will be required to submit their applications therefor under the Act of March 3, 1901, *supra*, in accordance with the then current regulations issued thereunder. (For existing regulations under said Act, see regulations approved March 26, 1901.)

45. **Notations and Procedure.**—Upon the filing of an application under this act, the Register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map, over his written signature, the date of filing. If it appears that no portion of the public lands or parks designated in the Act would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If vacant public land or lands in any park so designated are affected by the proposed right of way, the Register will so certify on the map and duplicate over his signature, and will promptly transmit the same to the General Land Office with report that the required notations have been made.

When permission to use the right of way applied for is given by the Secretary of the Interior, a copy of the original map will be

sent to the local officers, who will mark upon the township plats the line of the right of way and will note in pencil, opposite each tract of public land affected, that such permission has been given, the date thereof, and a reference to the Act.

#### TRAMROADS.

46. Rights of Ways for Tramroads.—The Secretary of the Interior is authorized to permit the use of rights of way for tramroads through the public lands of the United States, not within the limits of any park, national forest, or military or Indian reservation under the provisions of the Act of Congress of January 21, 1895 (28 Stat., 635), as amended by section 1 of the Act of May 11, 1898 (30 Stat., 404). The Act of January 21, 1895, entitled "An Act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military, or Indian reservation, for tramroads, canals, or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof; or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

This Act was amended by section 1 of the Act of May 11, 1898, *supra*, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following:

"That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way upon the public lands of the United States, not within limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs, and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses."

Applications for permission to use rights of way for tramroads should be prepared and filed in accordance with the regulations hereinbefore prescribed relative to presentation of applications for rights of way under the Act of February 15, 1901, and the then current regulations issued under the general railroad right-of-way Act of March 3, 1875 (for existing regulations under the latter Act see 32 L. D., 481), the prescribed forms in such regulations being so modified as to specify and relate to the Acts under which the application is made. It is to be specially noted that the Acts relating to tramroads do not authorize the granting of permission to use rights of way for such purpose within the limits of any park, national forest, or military or Indian reservation, and it is to be further noted that permission to use rights of way for tramroads over public lands, when granted, only confers a right in the nature of a



license and is subject to all the conditions and limitations hereinbefore stated in section 43 of these regulations.

**RIGHT OF WAY THROUGH NATIONAL FORESTS FOR DAMS, RESERVOIRS, WATER PLANTS, DITCHES, FLUMES, PIPES, TUNNELS, AND CANALS FOR MUNICIPAL OR MINING PURPOSES.**

47. General Statement.—Section 4, of the Act of Congress approved February 1, 1905 (33 Stat., 628), reads as follows:

Sec. 4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated.

This act grants rights of way through national forests to citizens and corporations of the United States for the objects therein specified, during the period of their beneficial use, under rules and regulations to be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are situated.

All applications for the right of way for the purposes set forth in said Act must be submitted in accordance herewith.

No construction will be allowed in national forests until an application for right of way has been regularly filed in accordance with these regulations and has been approved by the Secretary of the Interior, or unless permission has been specifically given.

48. Nature of Grant.—The right granted is not in the nature of a grant of lands, but is a base or qualified fee, giving the possession and right of use of the land for the purposes contemplated by the Act, during the period of the beneficial use. When the use ceases the right terminates, and thereupon proper steps will be taken to revoke the grant.

No right whatever is given to take any material, earth, or stone for construction or other purposes, nor is any right given to use any land outside of what is actually necessary for the construction and maintenance of the works.

49. Preparation and Applications.—Applications for right of way under this Act should be made in the form of a map and field notes, in duplicate, and must be filed in the local land office for the district in which the land traversed by the right of way is situated; if the land is in more than one district, duplicate maps and field notes need be filed in only one district and single sets in the others. The maps, field notes, evidence of water rights, etc., and, when the applicant is a corporation, the articles of incorporation and proofs of organization must be prepared and filed in accordance with sections 7 to 21, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the Act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit of one of them. A copy of their articles of association must also be

furnished, or if there be none, the fact must be stated over the signature of each member of the association.

If the applicant is not a native-born citizen, he must file the usual proof of naturalization. The applicant must set forth in the affidavit the purposes for which the right of way is desired.

50. **Water-Plant Structures.**—When application is made for right of way for water plants, the location and extent of ground proposed to be occupied by buildings, or other structures necessary to be used in connection therewith, must be clearly designated on the map and described in the field notes and forms (7 and 8, p. 27) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all others are connected therewith by course and distance shown on the map.

The applicant must also file an affidavit setting forth the dimensions and proposed use of each of the structures, and must show definitely that each is necessary to a proper enjoyment of the right of way granted by the Act.

51. **Stipulation and Bond.**—The applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of the national forest.

52. **Notation by Register.**—Upon the filing of an application under this Act, the register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map over his written signature the name of the land office and the date of filing.

If it appears that no portion of the public lands in a national forest would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If unpatented lands are affected by the proposed right of way, the Register will so certify on the map and duplicate, over his signature, and will promptly transmit the same to the General Land Office, with report that the required notations have been made.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the right of way as laid down on the map. They will also note the approval in ink on the tract books, opposite each legal subdivision affected, with a reference to the Act mentioned on the map.

53. **Right of Way Through Unsurveyed Land.**—Maps showing reservoirs, canals, water plants, etc., wholly upon unsurveyed lands will be received and placed on file in the General Land Office and the local land office of the district in which the same is located, for general information, and the date of filing will be noted thereon.

Fred Dennett,  
Commissioner.

Approved June 6, 1908.

Frank Pierce,  
Acting Secretary.



[Circular No. 5.]

**ADDENDA TO RIGHT-OF-WAY REGULATIONS.****Application for Easements for Power-Transmission Lines, etc.**

Department of the Interior,  
Washington, April 14, 1911.

The Commissioner of the General Land Office.

Sir: Your attention is called to that part of the Act of March 4, 1911 (Public, No. 478), which reads as follows:

That the head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights of way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, to the extent of twenty feet on each side of the center line of such electrical, telephone and telegraph lines and poles, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right of way herein granted for any one or more of the purposes herein named: Provided, That such right of way shall be allowed within or through any national park, national forest, military, Indian, or any other reservation only upon the approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: Provided, That all or any part of such right of way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for nonuse for a period of two years or for abandonment.

That any citizen, association, or corporation of the United States to whom there has heretofore been issued a permit for any of the purposes specified herein under any existing law, may obtain the benefit of this act upon the same terms and conditions as shall be required of citizens, associations, or corporations hereafter making application under the provisions of this statute.

It will be observed that this Act, which authorizes the granting of easements for electrical power transmission, and telephone and telegraph lines for stated periods not to exceed 50 years, follows, as closely as is possible in the accomplishment of its purposes, the language of the Act of February 15, 1901 (31 Stat., 790), which authorizes mere revocable permits for such lines, and for other purposes. This Act, therefore, merely authorizes additional or larger grants and does not modify or repeal the Act of 1901, and should be construed and applied in harmony with it.

It is not believed that it would be either advisable or feasible to definitely fix at this time the periods for which the authorized easements should be granted, since it will be wiser and more practical to leave that question to be determined in each particular case from its attendant facts and circumstances at the time the application is presented. Where the application involves transmission and distribution of electrical power a detailed statement of the power plant with which the transmission lines are connected should accompany the application; also a statement as to whether the power plant is located on public or private land, and whether any part of the system affects lands in reservations other than those under the jurisdiction of the Secretary of the Interior.

The regulations issued under the Act of February 15, 1901, in so far as they are applicable, will control in the presentation, con-

sideration, and granting of applications for easements under this Act.

Very respectfully,

Walter L. Fisher,  
Secretary.

### PIPE LINE—ARKANSAS.

An Act to grant right of way over the public domain in the State of Arkansas for oil or gas pipe lines.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a right of way through the public lands of the United States in the State of Arkansas is hereby granted for pipe-line purposes to any citizen of the United States or any company or corporation authorized by its charter to transport oil, crude or refined, or natural gas, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proof of organization under the same, to the extent of the ground occupied by the said pipe line and ten feet on each side of the center line of same.

Sec. 2. That any citizen of the United States, company, or corporation desiring to secure the benefits of this Act shall within twelve months after the location of ten miles of the pipe line, if the same be upon surveyed land, and if the same be upon unsurveyed lands within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its lines, and upon the approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such land over which such line shall pass shall be disposed of subject to such right of way.

Sec. 3. That nothing in this Act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

Sec. 4. That if any section of said pipe line shall not be completed within one year after the approval by the Secretary of the Interior of said section, or if any section of said pipe line shall be abandoned or shall not be used for a period of two years, the right of way herein granted as to any uncompleted, abandoned, or unused section of said pipe line shall be forfeited to the extent that the same is not completed or is abandoned or unused at the date of the forfeiture, without further action or declaration on the part of the Government or any proceedings or judgment of any court.

Sec. 5. That if any citizen, company, or corporation taking advantage of the benefits of this Act, shall violate the Act of July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (commonly known as the Sherman anti-trust act), or any amendment thereof, the right of way herein granted shall be forfeited without further action or declaration on the part of the Government or any proceedings or judgment of any court.

Approved April 12, 1910.

### FORMS FOR "DUE PROOFS" AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR CANALS, DITCHES, AND RESERVOIRS.

#### FORM 1.

I, ....., secretary (or president) of the ..... Company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction, according to the existing laws of the State (or Territory) of ....., and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company this ..... day of ....., in the year 19..

[Seal of company.]

..... of the ..... Company.

#### FORM 2.

I, ....., do certify that I am the president of the ..... Company, and that the following is a true list of the officers of the said company, with the full name and official designation of each, to-wit: (Here insert the full name and official designation of each officer.)



In witness whereof I have hereunto set my name and the corporate seal of the company this ..... day of ....., in the year 19..

[Seal of company.]

.....  
President of the ..... Company.

### FORM 3.

State of ....., County of ....., ss.

....., being duly sworn, says he is the chief engineer of (or the person employed to make the survey by) the ..... Company; that the survey of said company's (canals, ditches, and reservoirs), described as follows: (Here describe each canal, ditch, lateral, and reservoir for which right of way is asked, as required by Sec. 21, being a total length of canals, ditches, and laterals of ..... miles, and a total area of reservoirs of ..... acres), was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company) and under its authority, commenced on the ..... day of ....., 19.., and ending on the ..... day of ....., 19.., a[and that the survey of the said (canal, ditches, laterals, and reservoirs) accurately represents (a proper grade line for the flow of water, and accurately represents a level line, which is the proposed water line of the said reservoir)], and that such survey is accurately represented upon this map and by the accompanying field notes. a[And no lake or lake bed, stream or stream bed, is used for the said (canals, ditches, laterals, and reservoirs) except as shown on this map.]

.....  
Sworn and subscribed to before me this ..... day of ....., 19..

[Seal.]

.....  
Notary Public.

a This clause to be omitted in applications for telephones and telegraph lines.

### FORM 4.

I, ....., do hereby certify that I am president of the ..... Company; that ..... who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said (canals, ditches, laterals, and reservoirs) as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said (canals, ditches, laterals, and reservoirs) upon the location shown upon this map; that the said (canals, ditches, laterals, and reservoirs), as represented on this map and by said field notes, was adopted by the company, by resolution of its board of directors, on the ..... day of ....., 19.., as the definite location of the said (canals, ditches, laterals, and reservoirs) described as follows—(describe as in Form 3)—a[and that no lake or lake bed, stream or stream bed, is used for the said (canals, ditches, laterals, and reservoirs) except as shown on this map]; and that the map has been prepared to be filed for the approval of the Secretary of the Interior, in order that the company may obtain the benefits of b(sections 18 to 21, inclusive, of the Act of Congress approved March 3, 1891, entitled "An Act to repeal timber-culture laws, and for other purposes," and Sec. 2 of the Act approved May 11, 1898); and I further certify that the right of way herein described is desired for the main purpose of irrigation. c

Attest:

.....  
President of the ..... Company.

[Seal of company.]

.....  
Secretary.

a This clause to be omitted in applications for telephone and telegraph lines.

b Here insert the description of the Act of Congress under which the application is made when filed under some other act than that of 1891 and 1898.

c Or, where filed under other acts than that of 1891 and 1898, state the purposes for which right of way is applied for.

## FORM 5.

State of ....., County of ....., ss.

....., being duly sworn, says that he is the chief engineer of (or was employed to construct) the (canals, ditches, laterals, and reservoirs) of the ..... Company; that said (canals, ditches, laterals, and reservoirs) have been constructed under his supervision, as follows: (Describe as required in Sec. 21) a total length of constructed (canals, ditches, and laterals) of ..... miles, and a total area of constructed reservoirs of ..... acres; that construction was commenced on the ..... day of ....., 19.., and completed on the ..... day of ....., 19..; that the constructed (canals, ditches, laterals, and reservoirs), as aforesaid, conform to the map and field notes which received the approval of the Secretary of the Interior on the ..... day of ....., 19..

Sworn and subscribed to before me this ..... day of ....., 19..

[Seal.]

Notary Public.

## FORM 6.

I, ....., do certify that I am the president of the ..... company; that the (canals, ditches, laterals, and reservoirs) described as follows (describe as in Form 5) were actually constructed as set forth in the accompanying affidavit of ..... chief engineer (or the person employed by the company in the premises), and on the exact location represented on the map and by the field notes approved by the Secretary of the Interior, on the ..... day of ....., 19..; and that the company has in all things complied with the requirements of the Act of Congress d(March 3, 1891, granting right of way for canals, ditches, and reservoirs through the public lands of the United States.)

President of the ..... Company.

[Seal of company.]

Attest:

Secretary.

d Here insert the description of the Act of Congress under which the application is made when filed under some other Act than that of 1891.

## FORM 7.

[Under Act February 15, 1901.]

State of ....., County of ....., ss.

....., being duly sworn, says he is the chief engineer of (or the person employed by) the ..... company, under whose supervision the survey was made of the grounds selected by the company for structures for electrical purposes under the Act of Congress approved February 15, 1901, said grounds (here describe as required by Sees. 41 and 50); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said act of February 15, 1901 (31 Stat., 790).

Chief Engineer.

Subscribed and sworn to before me this ..... day of ....., 19..

[Seal.]

Notary Public.

## FORM 8.

[Under Act of February 15, 1901.]

I, ....., do hereby certify that I am the president of the ..... company; that the survey of the structures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of ....., its chief engineer (or the person employed in the premises), whose affidavit precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures



required (here describe as required by Secs. 41 and 50) for electrical purposes, under the Act of Congress approved February 15, 1901; and that the company, by resolution of its board of directors, passed on the ..... day of ....., 19..., directed the proper officers to present the said drawing for the approval of the Secretary of the Interior in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act approved February 15, 1901 (31 Stat., 790).

.....  
President of the ..... Company.

[Seal of the company.]

Attest:

.....  
Secretary.

### FORM 9.

#### Reservoir declaratory statement.

[Under Act of Jan. 13, 1897 (29 Stat., 484).]

Land Office at .....,

Res. D. S., No. ....

I, ....., of ....., do hereby certify that I am president of the ..... company, and on behalf of said company, and under its authority, do hereby apply for the reservation of land in ..... County, State of ....., for the construction and use of a reservoir for furnishing water for live stock under the provisions of the Act of January 13, 1897 (29 Stat., 484). The location of said reservoir and of the land necessary for its use, is as follows: ..... of section ..... in township ....., of range .... M., containing ..... acres.

I hereby certify that to the best of my knowledge and belief the said land is not occupied or otherwise claimed, is not mineral or otherwise reserved, and that the said reservoir is to be used in connection with the business of the applicant of .....

The land owned or claimed by the applicant within the vicinity of the said reservoir (within three miles) is as follows: .....

I further certify that no part of the land to be reserved under this application is or will be fenced; that the same shall be kept open to the free use of any person desiring to water animals of any kind; that the land will not be used for any purpose except the watering of stock, and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

The water of said reservoir will cover an area of ..... acres, in ..... of section .... in township ...., of range .... of said lands; the capacity of the reservoir will be ..... gallons, and the dam will be ..... feet high. The source of the water for said reservoir is ..... and there are no streams or springs within two miles of the land to be reserved except as follows: .....

The applicant has filed no other declaratory statements under this act except as follows:

No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.  
No. ...., ..... land office, area to be reserved ..... acres.

Total, ..... acres, of which Nos. .... are located in said county.

And I further certify that it is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[Seal of company.]

Attest:

.....  
Secretary.

State of ....., County of ....., ss.

....., being duly sworn, deposes and says that the statements herein made are true to the best of his knowledge and belief.

Sworn to and subscribed before me this ..... day of ....., in the year 19..

[Seal.]

.....,  
Notary Public.

Note.—When the applicant is a corporation the form should be executed by its president, under its seal, and attested by its secretary. When the applicant is not a corporation or an association of individuals, strike out the words in italics.

Land Office at .....,  
....., 19..

I, ....., register of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

Fees, \$.... paid.

.....,  
Register.

The description of the business of the applicant should include "a full and minute statement of the extent to which he is engaged in breeding, grazing, driving, or transporting live stock, giving the number and kinds of such stock, the place where they are being bred or grazed, and whether within an inclosure or upon uninclosed lands, and also from where and to where they are being driven or transported." Circular June 23, 1899.

#### FORM 10.

State of ....., County of ....., ss.

....., being duly sworn, says that he is the person who was employed to make the survey of a reservoir covering an area of ..... acres, the initial point of the survey being ..... (here describe as required by Sec. 21); said reservoir having been constructed upon the ..... quarter of the ..... quarter of section ....., township ....., range ....., ..... principal meridian, as proposed by reservoir declaratory statement No. ...., which was filed in the local land office at ....., under the provisions of the act of January 13, 1897 (29 Stat., 484); that the said survey was made on the ..... day of ....., 19..; that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of ..... gallons, and at the time of said survey contained ..... gallons of water.

Sworn and subscribed to before me this ..... day of ....., 19..

[Seal.]

.....,  
Notary Public.

#### FORM 11.

I, ....., do certify that I am the president of the ..... company which filed (or that I am the person who filed) reservoir declaratory statement No. ...., in the local land office at .....; that the reservoir proposed has been constructed upon the ..... quarter of the ..... quarter of section ....., township ....., range ....., ..... principal meridian, covering an area of ..... acres, the initial point of the survey being ..... (describe as in Form 10); that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purposes, and in the manner prescribed by the said Act of January 13, 1897 (29 Stat., 484), the provisions of which have been and will be complied with in all respects.

[Seal of company.]

Attest:

.....,  
President of the Company.

.....,  
Secretary.



## FORM 12.

State of ....., County of ....., ss.

....., being duly sworn, deposes and says that he is the president of the ..... company which filed (or that he is the person who filed) reservoir declaratory statement No. ...., in the local land office at .....; that the reservoir constructed in pursuance thereof, as heretofore certified, has been kept in repair; that water has been kept therein to the extent of not less than ..... gallons during the entire calendar year of 19..; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said years, and that the said company has in all things complied with the provisions of the Act of January 13, 1897 (29 State., 484).

President of ..... Company.

Sworn and subscribed to before me this ..... day of ....., 19..

[Seal.]

Notary Public.

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2. Act of Congress of Mar. 11, 1902 (32 Stat., 63), giving implied statutory sanction to above-quoted circular requirement.
3. Circular of Nov. 30, 1908 (37 L. D., 312), paragraphs 20 and 21, repeating requirement of publication.

### **Timber and Stone Cash Entries.**

1. Act of Congress of June 3, 1878 (20 Stat., 89), section 3.
2. Circular of Nov. 30, 1908 (37 L. D., 289), paragraph 25, expressing the requirement imposed by section 3 of the above-mentioned act.

### **Carey Act Selections.**

1. Act of Congress of Aug. 18, 1894 (28 Stat., 372, 422), commonly known as "the Carey Act." (Section 2.)
2. Circular of Apr. 9, 1909, renewing and repeating provisions of previous circulars (paragraph 15).

### **Grants to States and Territories for Educational Purposes.**

1. Circular of Apr. 25, 1907 (35 L. D., 537), paragraphs 9, 10 and 11.

### **Isolated Tracts of Public Lands.**

1. Section 2455, U. S. Revised Statutes, as amended by the Act of Congress of June 27, 1906 (34 Stat., 517).
2. Circular of July 18, 1906 (35 L. D., 44), paragraph 7.

### **Scrip, Military Bounty Land Warrants, Soldiers' Additional Homestead, Forest Reserve, and Other Lieu Selections and Locations.**

1. Circular of Feb. 21, 1908 (36 L. D., 278), paragraphs 2 and 3.

### **Mineral Lands and Mining Resources.**

1. Section 2325, U. S. Revised Statutes.
2. Mining regulations of Mar. 29, 1909 (37 L. D., 728), rules 45, 46 and 47.

### **Coal Lands.**

1. Section 2325, U. S. Revised Statutes. (See said section quoted above.)
2. Circular of Apr. 12, 1907 (35 L. D., 665), reprinted July 11, 1908, paragraphs 17 and 18.

### **Exchange of Public Lands for Lands in Private Ownership Within the Limits of Any Indian Reservation Created by Executive Order.**

1. Act of Congress of April 21, 1904 (33 Stat., 211).
2. Circular of March 3, 1909 (37 L. D., 537), paragraphs 11 and 12.

### **Alaskan Coal Lands.**

1. Act of Congress of Apr. 28, 1904 (33 Stat., 525), section 2.
2. Circular of July 18, 1904 (33 L. D., 114).

1. All original, second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

2. Commutation proof can not be made on homestead entries allowed under the Act of April 28, 1904 (33 Stat., 547), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat., 388); entries under the Enlarged Homestead Act (post, par. 46 et seq.); entries allowed for coal lands under the Act of June 22, 1910 (36 Stat., 583), so long as the land is withdrawn or classified as coal; additional entries allowed under the Act of April 28, 1904 (33 Stat., 527, Appendix No. 4); second entries allowed under the Act of June 5, 1900 (31 Stat., 267, Appendix No. 5); or second entries allowed under the Act of May 22, 1902



(32 Stat., 203, Appendix No. 5), when the former entry was commuted.

An exception to prohibition of commutation proof in cases where entry is made subject to the Act of June 22, 1910, and that is where the settler initiated his entry, selection or location in good faith prior to the passage of the Act. See law and circular of instructions thereunder, page 480.

3. Where there has been, immediately prior to the application to submit proof on a homestead entry, or immediately prior to the submission of proof, at least 14 months' actual and substantially continuous residence, accompanied by improvement and cultivation, the entryman, or his widow or heirs, may obtain patent by proving such residence, improvement, and cultivation, and paying the cost of such proof, the land office fees, and the price of the land, which is \$1.25 per acre outside the limits of railroad grants and \$2.50 per acre for lands within the granted limits, except as to certain lands which were opened under statutes requiring payment of a price different from that here mentioned. (See circular of Oct. 18, 1907, Appendix No. 14.)

#### NOTICE OF INTENTION TO MAKE PROOF.

4. Persons desiring to submit commutation or other final proof in homestead and desert land cases are required to present a written notice of intention to make final proof to the Register and Receiver of the land office for the district in which the land is situated. This notice must be plainly written. It must contain a statement showing the number and date of entry, with correct description of the land involved, the character of proof the claimant wishes to submit, and the names of four disinterested witnesses, with their postoffice addresses. The christian names of the witnesses must be given in full, for example—John J. Smith. Do not abbreviate nor give the initial of the christian name. An improper application to submit final proof creates much unnecessary work on the part of the officers, and becomes a source of annoyance to the entryman, always resulting in delay. We present herewith application to submit proof made on approved form.

4-348.

#### NOTICE OF INTENTION TO MAKE PROOF.

##### DEPARTMENT OF THE INTERIOR.

U. S. Land Office at .....

I, ....., of ....., who, on ....., 19.... made  
 ....., No. ...., for ..... Section .....,  
 (Kind of application or entry.)  
 Township ....., Range ....., ..... Meridian, hereby give notice of my inten-  
 tion to make final ..... proof, to establish my claim to the land above  
 (If homestead, insert "five year" or "commutation," as case may be.)  
 described, before ....., at ....., on the .....  
 (Name of officer.)  
 day of ....., 19...., by two of the following witnesses:

....., of .....  
 ....., of .....  
 ....., of .....  
 ....., of .....

(Signature of claimant.)

....., 19....

Notice of the above intention to make proof will be published in the  
 .....  
 (Name of newspaper.) (Place of publication.)  
 for a period of ..... consecutive ....., which I hereby designate as the  
 newspaper published nearest the land above described.  
 .....  
 Register.

The date of making proof and the name of the paper in which the notice is to be published must be left blank. The date will be fixed and the newspaper designated by the Register of the Land Office.

Upon the filing of the notice of intention to make final proof, notices of the same are made in triplicate. One of these notices is posted in the Land Office, one going to the chief of field division for the district, and the other to the newspaper designated by the Register to publish the same. Publication is made for six weeks prior to date set for the taking of proof. Publication fee must be paid by the entryman. The charge may vary in homestead cases in different localities. In the Mountain States the fee of the publisher is \$8 and this is considered a very reasonable charge.

Of the four witnesses named by claimant, he must produce two to give testimony in support of his entry. The testimony of witnesses and claimant must be taken separately and without the hearing of each other. Officers failing to follow this practice are violating the regulations of the Department in such cases.

The claimant is required to pay the charges of making the papers in connection with final proofs where the same are not taken before the Register and Receiver of the Land Office. For schedule of legal charges see 441. Whether the testimony is taken before the Register or Receiver or other officers, the Register and Receiver are allowed to charge the legal rate for examination of testimony in homestead final proof cases. The cost of examination of proof varies according to the State and number of words involved, ranging from 75 cents to \$3.

Final proofs are passed on by the Register and Receiver as soon as possible consistent with public business. Payment of either the price of the land under commutation, or final commissions, will not be accepted till the proof has been examined and found satisfactory. If the proof is found satisfactory, the same will be passed, otherwise it will be rejected. Due notice of which will be sent the claimant. In case the proof is approved, the claimant will be given a reasonable opportunity to make payment, usually from ten to thirty days. If the claimant fails to make the payment within the time allowed when called for, the proof will be rejected, and a new proof will be required.

Should the claimant fail to appear before the officer designated to take the proof at the time set, or within ten days thereafter, his application will be rejected. Taking of proof may be continued under certain circumstances.

#### IMPORTANT TO KNOW.

It is important to know the date the claimant established his residence; the date he completed his house and established his residence therein, and the character and extent and value of his



improvements, and the amount of land cultivated and crops produced.

The questions submitted to claimant and witnesses are substantially the same. All absences of the entryman must be noted. In view of so many inquiries for information as to what the claimant and his witnesses must know of their own knowledge when giving evidence in final proofs in homestead cases, we give herewith the information required on claimant in such cases, as is disclosed by the questions contained in approved form of deposition of claimant.

4—369.

Form approved by the Secretary of the Interior, November 23, 1908.

DEPARTMENT OF THE INTERIOR.

HOMESTEAD-ENTRY.

U. S. Land Office ....., No. ....  
Receipt No. ....

FINAL PROOF.

TESTIMONY OF CLAIMANT.

Question 1. What is your full name, age, and post-office address?

Answer .....

Question 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born? (If foreign born, see Note 1.)

Answer .....

Question 3. Are you the same person who made Homestead Entry No. ...., at the ..... Land Office on the ..... day of ..... 19...., for the ....., Section ....., Township ....., Range ....., ..... Meridian?

Answer .....

Question 4. (a) Are you married or single?

Answer .....

(b) If married, of whom does your family consist?

Answer .....

(c) If a married woman, state whether your husband now has an unperfected homestead entry, and during what time he has resided on this land with you?

Answer .....

Question 5. (a) When did you first establish actual residence upon this land?

Answer .....

(b) When was your house built on this land?

Answer .....

(c) Have either you or your family ever been absent from the homestead

since establishing residence?

(d) If there has been such absence give the dates covered by each absence; and as to each absence state whether you, your family, or both, were thus absent and the reason for each such absence?

Answer .....

Question 6. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

Answer .....

Subdivision.	Acres Cultivable.	Acres Timbered.	Feet Timber.
.....	.....	.....	.....

Question 7. State by subdivisions the number of acres cultivated, kind of crop planted, and amount harvested, each year. How many acres of the claim are now cleared, or broken, and under cultivation? If used for grazing only, state number and kind of stock grazed each year and by whom owned.

Answer .....

Question 8. Describe fully and in detail the amount and kind of improvements on each subdivision. State total value of improvements on the claim.

Answer .....

## Subdivision.

## Character of Improvements.

.....  
 Question 9. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Answer .....

Question 10. Are there any indications of coal, salines, or minerals of any kind on the land? If so, describe what they are.

Answer .....

Question 11. Have you ever made any other homestead entry? If so, describe the same.

Answer .....

Have you sold, conveyed, or agreed to sell or convey any portion of the land; if so, to whom and for what purpose?

Answer .....

Question 13. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof; if so, when, to whom, and for what purpose and in what amount?

Answer .....

Question 14. Have you any personal property of any kind elsewhere than on this claim? If so, describe the same, and state where the same is kept.

Answer .....

Question 15. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1896.

Answer .....

(Sign plainly, with full Christian name.)

Note 1.—If applicant is alien born, he should state the fact and file evidence of citizenship in due form, either a certificate of his own naturalization in a court of competent jurisdiction, or, if claiming to be a citizen by virtue of his father's naturalization and his own minority and residence in the United States at the date thereof, or, if a married woman claiming citizenship by virtue of her husband's nativity or naturalization, then record evidence of the naturalization of the father, or husband, or an affidavit as to the nativity of the latter.

Note 2.—The officer before whom the proof is made will see that all answers are complete and responsive to the questions.

Note 3.—The officer before whom the deposition is taken should call the attention of the witness to section 5392 of the Revised Statutes (over), and state to him it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

I Hereby Certify that the deponent was examined separately and apart from the other witnesses in the case; that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that deponent is to me personally known (or has been satisfactorily identified before me by .....); that I verily believe deponent to be the

(Give full name and post-office address.)

identical person hereinbefore described, and that said deposition was duly subscribed and sworn to before me at my office, in .....,

(Town, county, and State.)

within the ..... land district, this ..... day of ....., 19....

(Official designation of officer.)

### FINAL AFFIDAVIT REQUIRED OF HOMESTEAD CLAIMANTS.

I, ....., having made a Homestead Entry of the .....  
 ....., Section ....., Township ....., Range ....., ..... Meridian,  
 subject to entry at ....., under section No. 2289 of the Revised Statutes  
 of the United States, do now apply to perfect my claim thereto by virtue of  
 section No. .... of the Revised Statutes of the United States; and for that  
 purpose do solemnly ..... that I am a .....

(Native-born or naturalized.)

citizen of the United States; that I have made actual settlement upon and  
 have cultivated and resided upon said land since the ..... day  
 of ....., 19...., to the present time; that no part of  
 said land has been alienated, except as provided in section 2288 of the Revised  
 Statutes; but that I am the sole bona fide owner as an actual settler; that I



will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except .....

(Sign plainly with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S., below.)

I Hereby Certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....

(Give full name and post-office address.)

that I verily believe affiant to be a credible person and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in .....

(Town.)

....., this .....day

(County and State.)

of ..... 19....

(Official designation of officer.)

REVISED STATUTES OF THE UNITED STATES. Title LXX.—CRIMES.—  
Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

REVISED STATUTES.

For Sec. 2301, relative to payment and price of land, see page 529.

RULES TO BE OBSERVED IN PASSING ON FINAL PROOFS.  
[Circular.]

Department of the Interior,  
General Land Office,  
Washington, D. C., May 9, 1906.

Circular of July 17, 1889 (L. D., 123), is hereby revoked and the following rules substituted therefor, viz.:

1. Final proofs in all cases where the same are required by the general land laws or regulations of the Department, must be taken in accordance with the published notice; provided, however, that such testimony may be taken within ten days following the time advertised in cases where accident or unavoidable delays have prevented the applicant or his witnesses from making such proof on the day specified. Section 7 of the Act of March 2, 1889 (25 Stat., 854).

2. Where final proof or any part thereof has not been taken on the day advertised, or within ten days thereafter under the exceptions and as required in Rule 1, you will direct new advertisement to be made; and if no protest or objection is then filed the proof theretofore submitted, if in compliance with the law in other respects, may be accepted.

3. If the testimony of either claimant or witness is taken at a different place than that advertised the Commissioner may, if in his opinion same is required, cause new advertisement for the proof to be taken at such place as he may deem advisable, or if in his opinion new advertisement is unnecessary, and no protest or objection has been filed the proof theretofore submitted, if regular in all other respects, may be accepted without further testimony.

4. When a witness not named in the advertisement is substituted for an

advertised witness, unless two of the advertised witnesses testify, require new advertisements of the names of the witnesses who do testify at such time and place as you may direct; and if no protest or objection is then filed, the proof theretofore submitted, if satisfactory in all other respects, may be accepted.

5. Where final proof is taken before an office not named in the advertisement, it may be accepted if otherwise sufficient, provided the proof is taken at the time and place designated in the printed notice, or within ten days thereafter under the exceptions provided in Rule 1; and provided further, that both the officer advertised to take such proof and the officer taking same shall officially certify that no protest was at any time filed before him against the claimant's entry.

6. Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when under the hand and seal of the proper officer of the court in which such papers appear of record. However, where it is shown that the judicial record has been lost or destroyed, proof of citizenship in such cases may be established under the rules governing the introduction of secondary evidence.

7. When proof is made before the register or receiver and the final certificate does not bear the date of proof, the register must indorse on the back of the final certificate of entry, at the time of its issuance, a brief statement of the reason for the delay in issuance of final papers, the indorsement to be in each instance signed by the register. If the delay was caused by failure of applicant to tender the money or other consideration at the time of making proof, additional evidence must be furnished showing that the claimant had not, at date of certificate, transferred the land, which evidence may consist of his affidavit taken before some officer authorized to administer oaths. In cases where it appears that the delay in issuance of final papers was not the fault of the claimant, the proofs being otherwise regular, the Commissioner of the General Land Office may in his discretion pass same to patent.

8. When proof is made before any officer other than the register or receiver a reasonable time will be allowed for the transmission of papers to the local office, and if a longer interval is shown between date of proof and date of certificate, if the proof is otherwise sufficient and the record contains no reason for the delay, the register will indorse upon the back of the final certificate the statement required by Rule 7; and if such delay was the fault of the claimant, require the additional evidence prescribed by Rule 7.

9. Where final proof has been accepted by the local officers prior to promulgation of this circular, if in other respects satisfactory except as to delay in issuance of final papers as required by Rule 7, the Commissioner of the General Land Office may, if in his opinion the facts and circumstances so warrant, pass the cases to patent in the absence of other objection.

W. A. Richards, Commissioner.

Approved:

E. A. Hitchcock, Secretary.

**HOMESTEAD—COMMUTATION—SECTIONS 9 AND 10, ACT MAY 29, 1908.**  
[Circular.]

Department of the Interior,

General Land Office,

Washington, D. C., June 13, 1908.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is called to sections 9 and 10 of the Act of Congress approved May 29, 1908 (Public No. 160), which read as follows:

Sec. 9. That no final certificate issued upon proof offered under the commutation provisions of the homestead laws prior to the passing of this Act shall be canceled solely upon the ground of insufficient residence in any case where such proof shows that the entryman had in good faith resided upon and improved the lands covered by his entry for at least eight months within the year immediately preceding the submission of such proof, and in all such cases where the final certificate has been canceled because of insufficient residence such certificate shall, upon application made therefor by the entryman, his heirs or assigns, within one year from the passage of this Act, be reinstated and confirmed if no fraud was practiced by the entryman and no valid adverse rights have attached to the land affected thereby at the date of the filing of such application.



Sec. 10. That no homestead entry made heretofore under the provisions of section 2 of the Act of Congress entitled "An Act for the relief of the Colorado Co-operative Colony, to permit homestead entries in certain cases, and for other purposes," approved June fifth, nineteen hundred, shall be canceled for the reason that the former entry made by the entryman was commuted under the provisions of an Act entitled "An Act relating to the public lands of the United States," approved June fifteenth, eighteen hundred and eighty (Twenty-first Statutes, page two hundred and thirty seven). And all entries heretofore canceled on the ground that an entryman who commuted under the provisions of said Act of June fifteenth, eighteen hundred and eighty, is not entitled to the benefits of the Act of June fifth, nineteen hundred, shall be reinstated upon a showing by the entryman or his heirs, within one year from the approval of this Act, that there were no valid grounds for the cancellation of such entries except that a former entry was perfected under the Act of June fifteenth, eighteen hundred and eighty, in all cases where valid adverse rights have not attached to the lands covered by such second entries since the date of their cancellation.

2. Section 9 requires the acceptance and approval of all homestead commutation proofs upon which final certificates issued prior to May 29, 1908, and have not been canceled, wherein it is shown that the entryman had in good faith actually resided upon and cultivated the land covered by their entries for at least eight months during the twelve months immediately preceding the date on which the proof was offered, if there are no other good reasons to the contrary, and directs the reinstatement of canceled final certificates based upon such proofs in all cases where no fraud was practiced and no valid adverse rights have attached at the date of application for such reinstatement.

3. The residence referred to in this section need not have been continuous, and it is immaterial whether it began within six months after date of the entry, but it must in all cases be bona fide and actual and of such duration as to amount in the aggregate to eight months during the preceding twelve months.

4. In all cases where contests or protests have been initiated, or hearings or investigations ordered, under proofs and certificates affected by Sec. 9, final action on such proof and certificate will await and be controlled by the result of such contests, protests, hearing, or investigation.

5. In all cases where certificates affected by Sec. 9 have not been canceled, they will be considered and acted upon without further action by the entrymen, except in cases where entrymen are called upon to furnish supplemental proof, or to defend against protests or contests.

6. In all cases where certificates affected by Sec. 9 have been canceled because of insufficient residence, the entryman, or his heirs and assigns, must, before May 29, 1909, file with the proper register and receiver his application for reinstatement, specifically setting forth the grounds therefor, and showing that no fraud was practiced in connection with such final certificate. As soon as an application of this kind has been filed, the register and receiver will at once forward it to this office, with their report as to the status of the land affected, and their recommendation as to its allowance. This section does not authorize the reinstatement and approval of rejected final proof upon which no final certificate has issued.

7. Sec. 10 validates all uncanceled entries made prior to May 29, 1908, under Sec. 2, Act of June 5, 1900 (31 Stat., 267), by persons who had purchased under Sec. 2 of the Act of June 15, 1880 (21 Stat., 237), and authorizes the reinstatement of canceled entries of that kind in cases where valid adverse rights have not attached; but this Act will not prevent the cancellation of such entries on any other proper grounds.

8. Entrymen, or their heirs, seeking the reinstatement of canceled entries affected by Sec. 10, must, before May 29, 1909, file with the proper register and receiver a sworn application for such reinstatement, setting forth the fact that no valid adverse rights have attached prior to the presentation of their application. As soon as an application of this kind has been filed, the register and receiver will at once forward it to this office, with their report as to the status of the land affected and their recommendation as to its allowance.

Very respectfully,

S. V. Proudfit,  
Acting Commissioner.

Approved:

Frank Pierce, Acting Secretary.

## REGULATIONS AS CONTAINED IN CIRCULAR NO. 10 OF THE GENERAL LAND OFFICE.

### HOMESTEAD FINAL AND COMMUTATION PROOF.

38. Either final or commutation proof may be made at any time when it can be shown that residence and cultivation have been maintained in good faith for the required length of time, but if final proof is not made within seven years from the date of a homestead entry the entry will be canceled unless some good excuse for the failure to make the proof within the seven years is given with satisfactory final proof as to the required residence and cultivation made after the expiration of the seven years.

39. By Whom Proof May Be Offered.—Final proof must be made by the entrymen themselves, or by their widows, heirs, or devisees, and can not be made by their agents, attorneys in fact, administrators, or executors, except in the cases hereinafter mentioned. In order to submit final five-year proof the entryman, his widow, or the heir or devisee submitting proof must be a citizen of the United States. As a general rule commutation proof may be submitted by one who has declared his or her intention to become a citizen, but on entries made for land in certain reservations opened under special Acts the person submitting commutation proof must be a citizen of the United States.

An entrywoman who marries after making an entry must, in submitting proof, show the citizenship of her husband, as she by her marriage takes his status in respect to citizenship.

(a) If an entryman becomes insane after making his entry and establishing residence, patent will issue to the entryman on proof by his guardian or legal representative that the entryman had complied with the law up to the time his insanity began. In such a case if the entryman is an alien and has not been fully naturalized evidence of his declaration of intention to become a citizen is sufficient.

(b) Where entries have been made for minor orphan children of soldiers and sailors, proof may be offered by their guardian, if any, if the children are still minors at the time the proof should be made.

(c) When an entryman has abandoned the land covered by his entry and deserted his wife, she may make final or commutation proof as his agent, or, if his wife be dead and the entryman has deserted his minor children, they may make the same proof as his agent, and patent will issue in the name of the entryman.

(d) When an entryman dies leaving children, all of whom are minors, and both parents are dead, the executor or administrator of the entryman, or the guardian of the children, may, at any time within two years after the death of the surviving parent, sell the land for the benefit of the children by proper proceedings in the proper local court, and patent will issue to the purchaser; but if the land is not so sold, patent will issue to the minors upon proof of death, heirship, and minority being made by such administrator or guardian.

40. How Proofs May Be Made.—Final or commutation proofs may be made before any of the officers mentioned in paragraph 16 as being authorized to administer oaths to applicants.



Any person desiring to make homestead proof should first forward a written notice of his desire to the Register and Receiver of the Land Office, giving his postoffice address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is made, and the name and postoffice addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

41. **Publication Fees.**—Applicants shall hereafter be required to make their own contracts for publishing notice of intention to make proof, and they shall make payment therefor directly to the publishers, the newspaper being designated and the notice prepared by the Register.

42. **Duty of Officers Before Whom Proofs Are Made.**—On receipt of the notice mentioned in the preceding paragraph, the Register will issue a notice naming the time, place, and officer before whom the proof is to be made and cause the same to be published once a week for five consecutive weeks in a newspaper of established character and general circulation published nearest the land, and also post a copy of the notice in a conspicuous place in his office.

On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of ten days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is at all possible to do so, appear on the day mentioned in the notice. Entryman are advised that they should, whenever it is possible to do so, offer their proofs before the Register or Receiver, as it may be found necessary to refer all proofs made before other officers to a special agent for investigation and report before patent can issue, while, if the proofs are made before the Register or Receiver there is less likelihood of this being done, and there is less probability of the proofs being incorrectly taken. By making proof before the Register or Receiver the entrymen will also save the fees which they are required to pay other officers, as they will be required under the law to pay the Register and Receiver the same amount of fees in each case, regardless of the fact that the proof may have been taken before some other officer.

Entrymen are cautioned against improvidently and improperly commuting their entries, and are warned that any false statement made in either their commutation or final proof may result in their indictment and punishment for the crime of perjury.

43. **Fees and Commissions.**—When a homesteader applies to make entry he must pay in cash to the Receiver a fee of \$5 if his entry is for 80 acres or less, or \$10 if he enters more than 80 acres. And in addition to this fee he must pay, both at the time he makes entry and final proof, a commission of \$1 for each 40-acre tract entered outside of the limits of a railroad grant and \$2 for each 40-acre tract entered within such limits. Fees under the Enlarged Homestead Act are the same as above, but the commissions are based

upon the area of the land embraced in the entry (see par. 48). On all final proofs made before either the Register or Receiver, or before any other officer authorized to take proofs, the Register and Receiver are entitled to receive 15 cents for each 100 words reduced to writing, and no proof can be accepted or approved until all fees have been paid.

In all cases where lands are entered under the homestead laws in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, the commission due to the Register and Receiver on entries and final proofs, and the testimony fees under final proofs, are 50 per cent more than those above specified, but the entry fee of \$5 or \$10, as the case may be, remains the same in all the States.

United States commissioners, United States court commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive \$1 for administering the oath to each entryman and each final proof witness to final proof testimony, which has been reduced to writing by them.

44. The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (see Appendix No. 1), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned.

**Alienation After Proof and Before Patent.**—The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Land Department subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes, and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled purchaser's title must necessarily fail.

45. **Relinquishments.**—A homestead entryman, or in case of his death, his statutory successor, as explained in paragraph 22, may file a written relinquishment of his entry, and on the filing of such relinquishment in the local land office the land formerly covered by the entry becomes at once subject to entry by the first qualified applicant.

Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

Entries made for the purpose of holding the land for specula-



tion and sale of the relinquishments are illegal and fraudulent. Every effort will be made to prevent such frauds and to detect and punish the perpetrators.

Purchasers of relinquishments of fraudulent filings or entries should understand that they purchase at their own risk so far as the United States is concerned, and they must seek their own remedies under local laws against those who by imposing such relinquishments upon them have obtained their money without valuable consideration.

The terms "arid" or "nonirrigable" land, as used in these Acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these Acts. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under these Acts, provided, however, that no one entry shall embrace in the aggregate more than 40 acres of such irrigable lands.

47. Designation of Lands.—From time to time lists designating the lands which are subject to entry under these Acts are sent to the Registers and Receivers in the States affected, and they are instructed immediately upon the receipt of such lists to note the same upon their tract books. In the order designating land a date is fixed on which such designation will become effective. Until such date no applications to enter can be received and no entries allowed under these Acts, but on or after the date fixed it is competent for the Registers and Receivers to dispose of applications for land designated under the provisions of these Acts, in like manner as other applications for public lands.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above Acts the designation may be canceled; but where an entry is made in good faith under the provisions of these Acts, such designation will not thereafter be modified to the injury of anyone who, in good faith, has acted upon such designation. Each entryman must furnish affidavit as required by section 2 of the Acts.

48. Compactness—Fees.—Lands entered under the Enlarged Homestead Acts must be in a reasonably compact form and in no event exceed  $1\frac{1}{2}$  miles in length.

The Acts provide that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of \$10 required under the general homestead law, the commissions will be determined by the area of the land embraced in the entry.

#### SETTING OF FINAL PROOFS.

When hearings on applications to make final proof have been

set, a notice by postal card, containing the following, will be mailed to the entryman, to-wit:

4—192

DEPARTMENT OF THE INTERIOR,  
United States Land Office.

.....  
(Place.)

.....  
(Date.)

Final proof on your ..... is set before ..... at .....  
(Kind of entry.)  
on ..... Notice will be published in the .....  
(Newspaper.)  
.....

Register.

Important Notice.—Persons submitting commutation or final five-year proof are warned against discontinuing their residence upon the homestead before the proof is found satisfactory by the Land Department, as an adverse claim may arise or sufficient of the statutory period of seven years may not remain within which to make the showing required for new proof. Alienation of the land will also defeat the right to submit new proof and will forfeit the entry if proof is finally rejected.

**INSTRUCTIONS RELATIVE TO PUBLICATION OF FINAL-PROOF NOTICES AND CONCERNING THE DISCRETIONARY AUTHORITY OF REGISTERS IN THE SELECTION OF NEWSPAPERS FOR THAT PURPOSE.**

Department of the Interior,  
General Land Office,  
Washington, D. C., August 11, 1909.

Registers and Receivers of United States District Land Offices.

Sirs: This office is in daily receipt of complaints from editors and publishers of newspapers to the effect that their publications are not accorded the patronage which should be bestowed upon them, in accordance with the law and regulations governing the publication of notices of intended final proofs on entries of public lands.

The object of the law requiring publication of such notices is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein, or who have information concerning the illegality or invalidity of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Land Department. It is unnecessary to state that this object can not be secured by a notice published in a paper which has no meritorious circulation among the people resident in the locality in which the affected land is situated, and that inattention to or disregard of their duty in this behalf on the part of Registers will result in the total subversion of the law and the defeat of its purpose and intent. To the end, therefore, that you may be fully instructed concerning your official obligation in the premises, and that you may be urged to an alert and diligent performance of the duty which the law imposes upon you, your attention is directed to the several rules now to be stated and which should govern and control you in the discharge of your official obligation:

First. A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed



a qualified medium of notice unless it shall have been continuously published during an unbroken period of six months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (secs. 427 to 437, inclusive, Postal Laws and Regulations), a privilege available to all newspapers having a legitimate list of subscribers and a known place of publication.

Second. The notice must in all cases be published in the newspaper which may be printed and issued at a place nearest to the lands which the notice affects. By the word "nearest" as here used it is not intended that geographical proximity shall be measured on an air line drawn between the land and the place of publication, but by the length of the shortest and principally traveled thoroughfare between such places, being the highway ordinarily used and employed for travel by vehicles of any kind. But this qualification shall not be intended as authorizing any manifest perversion of the spirit of the rule, but simply to dispense with any strict rule based on geographical distance.

Third. It is not necessary that the newspaper denominated as the medium of such notice shall be published in the same county as that in which the land lies, or even in the same land district. On the contrary, a newspaper published in an adjoining county, if its place of publication is nearer to the land than that of any other newspaper, must be designated as the agency of publication, if it is also qualified by reason of its general circulation in the vicinity of the affected lands.

Fourth. The law invests Registers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred. It follows that a Register's action in the exercise of such discretion is subject to review by this office in any case where it is sufficiently alleged that the discretion has been abused, meaning thereby that it has been exercised in a manner perverse of the object of the law in requiring such notices to be published. This power of review will ordinarily be exercised and made effective in a proper case by holding the final proof to have been preceded by insufficient notice; but it may be resorted to and exercised in any case in which it may be shown that a Register is persistently designating a manifestly inefficient medium of notice, by forbidding the further publication of notices in such a newspaper until it shall have acquired and sufficiently established its possession of the requisite qualifications. In other words, where it has once been determined that a newspaper is not a competent medium of notice, it is within the power of this office to forbid the continued selection of that newspaper as the means of publication without awaiting repeated abuses of discretion on the part of a Register and a determination in each separate instance that the notice was ineffectually published. This course of action will, therefore, be pursued whenever it is shown that a Register is bestowing his patronage upon an alleged newspaper which is not entitled to that character, being merely a private advertising agency or published for some special purpose and not

as a general disseminator of news, or where such paper has no actual bona fide or reasonably meritorious circulation, or is not in fact published at its pretended place of publication, but at some other place.

Fifth. Where a Register acts in the reasonable and not manifestly unfair and improper exercise of his discretion his decision will not be interfered with or disturbed by this office. The Department can not and will not undertake to weigh and nicely calculate the relative efficiency of two or more newspapers published in the same place and alike possessing and enjoying an established character and general circulation; nor will it, as between two papers published at different places, permit any slight and unimportant advantage in the matter of geographical proximity, period of publication, or extent of circulation, possessed by one of such papers over the other, to serve as a sufficient reason for disapproval of the Register's conclusion as to which one of such newspapers should be designated as the means of publication.

Sixth. It is earnestly desired that you shall severally be at all times careful in your observance of and adherence to the rules which have been here stated and prescribed for your governance, to the end that the now numerous and urgent complaints of alleged discrimination, and charges to the effect that the object of the law is not observed in the choice of newspapers for the publication of final-proof notices, may be at least greatly diminished in number, as well as to the further end that such as may be received shall be without foundation of fact or in law.

Seventh. Persons seeking to establish their right to a legal title to any public lands are not authorized to interfere with the discretion of the Register in the choice of a newspaper in which to publish notice of their claims; nor will any designation of a newspaper made by a Register, in the reasonable exercise of that discretion, be disturbed on the ground that the claimant recommended another newspaper. All other conditions being equal, it will be entirely proper to accord favorable consideration to a claimant's nomination of a newspaper, though acceptance of such a nomination will not be enjoined upon you.

Eighth. None of the rules herein stated respecting the designation of the newspaper are intended to apply to, or govern, publication of notice concerning proof proposed to be offered in support of an application for the purchase of lands chiefly valuable for their timber or stone, under the Act of Congress of June 3, 1878 (20 Stats., 89), as extended by the Act of Congress of August 4, 1892 (27 Stats., 348), nor to the purchase of Alaskan coal lands under the Act of Congress of April 28, 1904 (33 Stats., 525). Publication of such notices must be procured by the applicants, in newspapers selected by them, but this privilege does not exempt them from the obligation to select a newspaper published nearest to the lands to which the application relates, and such paper must be in all other respects a competent medium of notice, in accordance with the principles which have been stated. You will give to all applicants under this Act due counsel and instruction concerning the duty imposed upon them in respect of publication of notice, to the end that they may not ignorantly err in the choice of newspapers through which to communicate such notice.



## PROCEDURE IN CASES OF COMPLAINTS.

Ninth. No appeal will lie from the action of the Register in refusing to name any particular newspaper as an agency for the publication of notices concerning claims to public lands. But any editor or proprietor of a newspaper who believes and desires to charge that a notice of proof in support of any claim to public land has been published in a paper disqualified by the rules and principles herein stated, to serve as the medium of such notice, may file in the district land office from which such notice emanated a written and verified protest against the acceptance of the proof submitted in accordance with such notice. Such protest should set forth all material and essential facts within the knowledge of the protestant, or of which he has reliable information and which he believes to be true, and which, if duly established by proof, would require a determination that the newspaper in which the notice was published was and is not a reputable and established publication, printed, in good faith, for the diffusion of local and general news; or that it is and was not the paper published nearest to the land affected by said notice, and that there is another newspaper published at a place nearer to said lands, equally well qualified in all respects to convey notice of the claim thereto asserted; or any other cause of disqualification expressed and defined in and by the foregoing several rules.

Tenth. Any such protest must be accompanied by copies of at least three successive editions of the paper against whose efficiency as a means of notice the protest is directed, and by as many like copies of the paper published by protestant, and alleged to have been a more efficient agency of notice than was the paper actually chosen. It should, in addition to other facts hereby made essential, disclose the relative number of actual paying subscribers supporting the said two newspapers; the number of papers actually distributed in the county in which said papers are published and in the county in which the land is situated; and the number of papers mailed to bona fide subscribers at the postoffice nearest to the land to which such notice relates. It should state the length of time during which each of said newspapers has been actually and continuously published, immediately preceding the date of the protest; and, if either of said papers has been denied, or has never applied for, entry as second-class matter in the postoffice at the place of publication, that fact should be stated.

Eleventh. Where any protest has been filed in the manner herein prescribed it shall be the duty of the Register and Receiver to immediately consider same and to proceed thereon as in other cases of protests against final proofs. If they should conclude that the facts stated in the protest are insufficient to warrant an order for a hearing, they will render decision to that effect and duly notify the protestant thereof, at the same time advising him of his right to prosecute an appeal to this office, in the manner and within the time prescribed by the rules of practice. After the expiration of the period during which an appeal may be prosecuted, they will, if no such appeal be filed, forward the protest and accompanying exhibits to this office, with their decision thereon, as in cases of unappealed contests, together with a separate report by the Register concerning the facts within his knowledge and bear-

ing, in a material manner, on the merits of the question presented by the protest.

Twelfth. In all cases where no appeal is prosecuted from a decision by the Register and Receiver dismissing a protest, that decision will be considered final as to the facts; and acquiescence therein by this office will be refused only when it is manifest that it was error to determine that no proper ground of protest was sufficiently alleged.

Thirteenth. The law imposes upon Registers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication. Registers should accordingly exercise the utmost care in the examination of such notices and in the comparison thereof with the records of their offices, to the end that they may not go to the printer containing any erroneous description of the entered land, or designating an officer not authorized to receive the proof, or that they shall not be for any other reason insufficient. It is equally important that a notice correct in all of these particulars shall not be published in a newspaper manifestly disqualified as a means of publication and clearly incapable of bringing the notice to the attention of the people dwelling in the vicinity of the lands to which it relates.

Neglect of duty above defined, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the Register by whom the publication was procured will be required to effect the necessary republication at his own proper expense. If an error is committed by the printer of the paper in which the notice appears, the Register may require such printer to correct his error by publishing the notice anew for the necessary length of time, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

## **LAWS AND REGULATIONS.**

For your more complete instruction concerning the subject-matter of these rules, and as a means of affording a ready and convenient reference to the several laws and regulations providing for and requiring publication of notice in relation to entries of and claims to public lands, those laws and regulations are here assembled. A careful examination thereof will familiarize you with the language in which they express their requirements and indicate to you their evident purpose.

### **Homestead and preemption entries.**

(1) Act of Congress of March 3, 1879 (20 Stat., 472).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That before final proof shall be submitted by any person claiming to enter agricultural lands under the laws providing for preemption or homestead entries, such person shall file with the register of the proper land office a notice of his or her intention to make such proof, stating therein the description of the lands to be entered, and the names of the witnesses by whom the necessary facts will be established.

Upon the filing of such notice, the register shall publish a notice that such application has been made, once a week for the period of thirty days, in a newspaper to be by him designated as published nearest to such land, and he shall also post such notice in some conspicuous place in his office for



the same period. Such notice shall contain the names of the witnesses as stated in the application. At the expiration of said period of thirty days, the claimant shall be entitled to make proof in the manner heretofore provided by law. The Secretary of the Interior shall make all necessary rules for giving effect to the foregoing provisions.

(2) Circular of April 10, 1909, paragraphs 40, 41, and 42, continuing in force the principle of a requirement announced by earlier circulars.

40. How proofs may be made.—Final or commutation proofs may be made before any of the officers mentioned in paragraph 16, as being authorized to administer oaths to applicants.

Any person desiring to make homestead proof should first forward a written notice of his desire to the register and receiver of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

41. Publication fees.—Applicants shall hereafter be required to make their own contracts for publishing notice of intention to make proof, and they shall make payment therefor directly to the publisher, the newspaper being designated and the notice prepared by the register.

42. Duty of officers before whom proofs are made.—On receipt of the notice mentioned in the preceding paragraph, the register will issue a notice naming the time, place, and officer before whom the proof is to be made and cause the same to be published once a week for five consecutive weeks in a newspaper of established character and general circulation published nearest the land, and also post a copy of the notice in a conspicuous place in his office. \* \* \*

#### **Desert-land entries.**

(1) Circular of June 27, 1887 (5 L. D., 708), paragraph 13.

13. Before final proof shall hereafter be submitted by any person claiming to enter lands under the desert-land act, such person will be required to file a notice of intention to make such proof, which shall be published in the same manner as required in homestead and preemption cases.

(2) Act of Congress of March 11, 1902 (32 Stat., 63), giving implied statutory sanction to above-quoted circular requirement.

That hereafter all affidavits, proofs, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising federal jurisdiction in the Territory or before the judge or clerk of any court of record in the land district in which the lands are situated: Provided, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof, if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. \* \* \*

(3) Circular of November 30, 1908 (37 L. D., 312), paragraphs 20 and 21, repeating requirement of publication.

20. The entryman, or his assignee, if the entry has been assigned, is ordinarily allowed four years from the date of the entry in which to complete the reclamation of the land, and he is entitled to make final proof and receive patent as soon as he has expended the sum of \$3 an acre in improving and reclaiming the land, and has reclaimed all of the irrigable land embraced in his entry, and has actually cultivated one-eighth of the entire area of the land entered. When an entryman has reclaimed the land and is ready to make final proof he should apply to the register and receiver for a notice of intention to make such proof. This notice must contain a complete description of the land and must describe the entry by giving the number thereof and the name of the entryman. If the proof is made by an assignee, his name as well as that of the original entryman should be stated. It must also show when, where, and before whom the proof is to be made. Four wit-

nesses may be named in this notice, two of whom must be used in making the proof.

21. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the land, and it must also be posted in a conspicuous place in the local land office for the same period of time. The date fixed for the taking of the proof must be at least thirty days after the date of first publication. Proof of publication must be made by the affidavit of the publisher of the newspaper or by some one authorized to act for him. The register will certify to the posting of the notice in the local office.

#### **Timber and stone cash entries.**

(1) Act of Congress of June 3, 1878 (20 Stat., 89), Sec. 3.

Sec. 3. That upon the filing of said statement, as provided in the second section of this act, the register of the land office shall post a notice of such application, embracing a description of the land by legal subdivisions, in his office, for a period of sixty days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register of the land office satisfactory evidence, first, that said notice of the application prepared by the register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this Act, unoccupied and without improvements, other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and the receiver, as provided for in case of mining claims in the twelfth section of the Act approved May tenth, eighteen hundred and seventy-two, the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon: Provided, That any person having a valid claim to any portion of the land may object, in writing, to the issuance of a patent to lands so held by him, stating the nature of his claim thereto; and evidence shall be taken, and the merits of said objection shall be determined by the officers of the land office, subject to appeal, as in other land cases. Effect shall be given to the foregoing provisions of this Act by regulations to be prescribed by the Commissioner of the General Land Office.

(2) Circular of November 30, 1908 (37 L. D., 289), paragraph 25, expressing the requirement imposed by Sec. 3 of the above-mentioned Act.

(Note.—It will be observed that an applicant for the purchase of lands chiefly valuable for timber and stone is required to procure publication of notice of his application in a newspaper published nearest to the lands which he seeks to purchase. In such cases the register does not designate the newspaper; but it is the duty of the register and receiver, nevertheless, to enforce the requirement that such a notice shall be published in the paper nearest to the land, and they will reject any proof which is not preceded by notice published in the papers so qualified.)

25. After the appraisalment or reappraisalment and deposit of purchase money and fee have been made the register will fix a time and place for the offering of final proof, and name the officer before whom it shall be offered, and post a notice thereof in the land office and deliver a copy of the notice to the applicant, to be by him and at his expense published in the newspaper of accredited standing and general circulation published nearest the land applied for. This notice must be continuously published in the paper for sixty days prior to the date named therein as the day upon which final proof must be offered.

#### **Carey act selections.**

(1) Act of Congress of August 18, 1894 (28 Stat., 372, 422), commonly known as the "Carey Act." (Sec. 2.)

\* \* \* As fast as any State may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: Provided, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person,



and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, one thousand dollars.

(2) Circular of April 9, 1909, renewing and repeating provisions of previous circulars (paragraph 15).

15. When said list is filed in the local land office, there shall also be filed by the State a notice, in duplicate, prepared for the signature of the register and receiver, describing the land by sections, and portions of sections, where less than a section is designated (Form 8, p. 15). This notice shall be published at the expense of the State once a week in each of nine consecutive weeks, in a newspaper of established character and general circulation, to be designated by the register as published nearest the land. One copy of said notice shall be posted in a conspicuous place in the local office for at least sixty days during the period of publication.

#### **Grants to States and Territories for educational purposes.**

(1) Circular of April 25, 1907 (35 L. D., 537), paragraphs 9, 10, and 11.

9. Notice of selection of all lands must be given by publication once a week for five successive weeks in a newspaper of general circulation in the county where the lands are located, the paper to be designated by the register.

10. Notice for publication will be prepared by the register at the time of the acceptance of the selections, and will be transmitted by registered mail to the proper State or Territorial official for publication in the paper or papers designated, and a copy of such notice shall also be posted by the register in a conspicuous place in his office, and remain so posted until the expiration of time allowed for the submission of proof of publication.

To save expense, the register may embrace two or more lists in one publication when it can be done consistently with the requirement of publication in a newspaper of general circulation in the county where the land is situated.

The published notice will embrace only the selected lands described by the largest legal subdivisions embraced in the separate lists, care being taken to avoid repetition of numbers of sections, townships, and ranges.

11. Proof of publication will be the affidavit of the publisher or foreman of the newspaper employed, that the notice (a copy of which must be annexed to the affidavit) was published in said newspaper once a week for five successive weeks. Such affidavit must show that the notice was published in the regular and entire issue of the paper, and was published in the newspaper proper and not in a supplement.

The proof of publication of notice must be filed with the register within ninety days after receipt of notice for publication, and will be forwarded by the register to the General Land Office with a report as to whether protest or contest has been filed against any selection, and if protest or contest is filed, the same shall accompany the report. Failure by the State or Territory to furnish proof of publication within the time limited will be cause for the rejection of the selection, upon report of such failure by the register, accompanied with evidence of service of notice prescribed in Rule 10. \* \* \*

#### **Isolated tracts of public lands.**

(1) Section 2455, U. S. Revised Statutes, as amended by the Act of Congress of June 27, 1906 (34 Stat., 517) again amended. (See Isolated Tracts.)

(2) Circular of July 18, 1906 (35 L. D., 44), paragraph 7.

7. When lands are ordered to be exposed at public sale, the register and receiver will cause a notice to be published once a week for five consecutive weeks (or for thirty consecutive days if a daily paper), immediately preceding date of sale, in a newspaper to be designated by the register as published nearest the land described in the application, using the form hereinafter given. The register will also cause a similar notice to be posted in the local land office, such notice to remain so posted during the entire period of publication. The applicant must furnish proof that publication was duly made.

**Scrip, military bounty land warrants, soldiers' additional homestead entries, forest reserve and other lieu selections and locations.**

(1) Circular of February 21, 1908 (36 L. D., 278), paragraphs 2 and 3.

2. You will require the locator or selector, within twenty days from the filing of his location or selection, to begin publication of notice thereof, at

his own expense, in a newspaper to be designated by the register as of general circulation in the vicinity of the land, and to be the nearest thereto. Such publication must cover a period of thirty days, during which time a similar notice of the location or selection must be posted in the local land office and upon the lands included in the location or selection, and upon each and every noncontiguous tract thereof.

3. The notice must describe the land located or selected, give the date of location or selection, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be mineral in character, an opportunity to file objection to such location or selection with the local officers for the land district in which the land is situate, and to establish their interest therein, or the mineral character thereof.

#### **Mineral lands and mining resources.**

(1) Section 2325, U. S. Revised Statutes. (See page 575.)

(2) Mining Regulations of March 29, 1909 (37 L. D., 728), rules 45, 46, and 47.

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

47. The register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

#### **Coal lands.**

(1) Section 2325 U. S. Revised Statutes. (See said section quoted above.)

(2) Circular of April 12, 1907 (35 L. D., 665), reprinted July 11, 1908, paragraphs 17 and 18.

17. Upon the filing of an application to purchase coal lands under the provisions of paragraphs 10 or 14, the applicant will be required, at his own expense, to publish a notice of said application in a newspaper nearest the lands, to be designated by the register, for a period of thirty days, during which time a similar notice must be posted in the local land office and in a conspicuous place on the land. The notice should describe the land applied for and state that the purpose thereof is to allow all persons claiming the land applied for, or desiring to show that the applicant's coal entry should not be allowed for any reason, an opportunity to file objections with the local land officers.

Publication must be made sufficiently in advance to permit entry within the year specified by the statute.

18. After the thirty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement (including an attached copy of the published notice) that the notice was published for the required period, giving the first and last date of such publication, and his own affidavit, or that of some credible person having personal knowledge of the fact, showing that the notice aforesaid remained conspicuously posted upon the land sought to be patented during said thirty days' publication, giving the dates. The register shall certify to the fact that the notice was posted in his office for the full period of thirty days, the certificate to state distinctly when such posting was done and how long continued, giving the dates. In no case shall entry be allowed until the proofs specified have been filed. \* \* \*



**Exchange of public lands for lands in private ownership within the limits of any Indian reservation created by executive order.**

(1) Act of Congress of April 21, 1904 (33 Stat., 211).

That any private land over which an Indian reservation has been extended by executive order, may be exchanged at the discretion of the Secretary of the Interior and at the expense of the owner thereof, and under such rules and regulations as may be prescribed by the Secretary of the Interior, for vacant, nonmineral, nontimbered, surveyed public lands of equal area and value and situated in the same State or Territory.

(2) Circular of March 3, 1909 (37 L. D., 537), paragraphs 11 and 12.

11. In all cases you will require the applicant, within twenty days from the filing of his application, to begin publication of notice thereof at his own expense in a newspaper to be designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Such publication must cover a period of thirty days, during which time a similar notice of the application must be posted in the local land office and upon each and every noncontiguous tract included in the application.

12. The notice should describe the land applied for and give the date of application, and state that the purpose thereof is to allow all persons claiming the land under the mining or other laws, desiring to show it to be mineral in character or adversely occupied, an opportunity to file objection to such application with the local officers of the land district in which the land is situated and to establish their interest therein or the mineral character thereof.

**Alaskan coal lands.**

(1) Act of Congress of April 28, 1904 (33 Stat., 525), Sec. 2. (See page 289.)

(2) Circular of July 18, 1904 (33 L. D., 114).

Upon the presentation of an application for patent, as provided by Sec. 2, if no reason appears for rejecting the application, the same will be received by the register and receiver and the claimant required to publish a notice of such application for the period of sixty days in a newspaper in the district of Alaska published nearest the location of the particular lands, and the register will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, nine consecutive insertions are necessary. When in a daily newspaper, the notice must appear in each issue for 61 consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

The notice so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data, the published notice must further indicate the locus of the claim by giving the connecting line as shown by the field notes and plat between a corner of the claim and a United States mineral monument or a corner of the public survey, if there is one, and fix the boundaries of the claim by courses and distances.

Very respectfully,

Approved August 11, 1909.

Jesse E. Wilson, Acting Secretary.

S. V. Proudfit,

Acting Commissioner.

**NOTATION OF RIGHTS OF WAY ON ENTRY PAPERS.**

**Instructions.**

Department of the Interior,  
General Land Office,  
Washington, February 2, 1912.

Registers and Receivers, United States Land Offices.

Sirs: Some misapprehension having arisen as to the proper construction of departmental circulars of November 3, 1909 (38 L. D., 284), and January 19, 1910 (38 L. D., 399), governing notation of rights of way on entry papers, you are now instructed that such notations should be made only where your records show that the land involved, or some part of it, is covered by an approved application for right of way. In this connection attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Sainte Marie Railway Company v. Doughty (208 U. S., 251). Applicants to enter public lands that are affected by a mere pending application for right of way, should be verbally informed thereof, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land

subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:

Samuel Adams,  
First Assistant Secretary.

## **DIGEST OF DECISIONS OF THE DEPARTMENT ON COMMUTATION AND FINAL PROOFS IN HOMESTEAD CASES.**

### **Notice:**

Final proof submitted on indefinite notice must be republished. Kemp's case, 9 L. D., 439.

Lands must be correctly described or republication will be ordered.

Adams' case, 6 L. D., 705.

Ulrich Fuchser, 7 L. D., 467.

Clark's case, 7 L. D., 485.

Sarah J. Tate, 10 L. D., 469.

Names of witnesses should be properly given and must be correctly printed. Mistakes arising in such matters will call for republication.

Amos E. Smith, 8 L. D., 24.

### **Cultivation:**

Where commutation proofs fail to disclose requirements of law as regards residence and cultivation new proof may be submitted at any time within the lifetime of the entry where no adverse claim intervenes.

Vandevoort's case, 7 L. D., 86.

Every fact necessary and essential to entitle claimant to make final proof must appear affirmatively from the proof.

U. S. v. Skahen, 6 L. D., 120.

Parks' case, 6 L. D., 549.

Garlies' case, 6 L. D., 310.

"Mere pretense of cultivation does not satisfy the requirements of the homestead law. A proof which fails to show bona fide compliance with the law in the matter of cultivation must be rejected."

Ingelev J. Clomset, 36 L. D., 255.

"Boxing and chipping trees for turpentine on unperfected homestead entries constitutes trespass and cannot in any sense be considered as cultivation within the spirit of the homestead law."

Robert L. McKenzie, 36 L. D., 302.

"Using the land for the raising of hogs is an agricultural use, and where the land is better adapted to that use than tillage of the soil, meets the requirements of the homestead law with respect to cultivation."

For cultivation required under the Enlarged Homestead Act and under the Three Year Homestead Act, see title, "Enlarged Homestead" and "Three Year Homestead."

### **Residence:**

"Temporary absences of a homestead entryman from his claim, when necessary to procure a livelihood, may be excused, where it clearly appears that actual residence is being maintained in good faith; but failure to maintain residence cannot be excused on the ground that the entryman cannot make a living on the land."

Smith v. Husted, 35 L. D., 376.

Leave of absence does not cure defect in residence not established at the time leave was granted.

Matics v. Gillidett, 35 L. D., 353.

Extension of time in which to establish residence cannot be granted.

Cummings v. Clark, 35 L. D., 373.

"An extension of time beyond the six-month period accorded by statute within which to establish residence upon a homestead claim will not be allowed on the ground of climatic conditions unless it appear that the same conditions also prevailed and prevented the establishment of residence during that period."

Vening v. Colwell, 35 L. D., 356.

"Under the provisions of the Act of March 3, 1881, the Commissioner of the General Land Office may, in his discretion, allow a homestead entryman



twelve months from the date of his entry within which to commence residence upon the land, where it is satisfactorily shown that on account of climatic conditions it is impossible to commence residence within six months; but in such cases the entryman may be credited with constructive residence for a period of six months only, and actual residence for the remainder of the said period of five years must be made and shown as in ordinary homestead cases."

Allen Clark, 35 L. D., 317.

"Two periods of bona fide residence, separated by leave of absence regularly procured, without fraud, may be added together to make up the necessary fourteen months as a basis for commutation." This opinion modified the one in the case of Esberne K. Muller, 39 L. D., 72.

Sherman Shouse, L. D., 456.

"Credit for residence will not be allowed during the time the land is not subject to entry by the person maintaining residence."

39 L. D., 230.

"A homestead entryman is entitled to the exclusive possession and enjoyment of the lands embraced in his entry, and where he in good faith builds his house upon the land with a view to establishing residence and complying with the law, but is prevented by the threats of a rival claimant from establishing residence on the particular portion of the land selected by him for that purpose, it is not incumbent upon him to establish his residence upon another portion of the land, and he will not be held in default for failure to do so."

Cannon v. Johnson, 34 D. D., 348.

"An entryman's absences from the land covered by his entry are excusable when due to duress arising from threats of personal violence of such character as to lead the entryman to believe that he could not remain on the land except at the risk of his life."

Vaughn et al. v. Gammen, 27 L. D., 438.

Official employment will not excuse failure to establish residence, and cultivation and improvements must be continued.

Dalquist, 34 L. D., 396.

Commutation proof upon an entry made prior to November 1, 1907, submitted immediately after the expiration of the fourteen months from date of entry showing that residence was not established until just before the expiration of six months and that the entryman was absent an intermediate period of two months during the requisite eight months will not be accepted as sufficient.

Mary E. Elson, 38 L. D., 541.

A second homestead entry made under the Act of April 28, 1904, which forbids commutation of entries made thereunder, may be perfected under the Act of February 8, 1908, which permits commutation.

William R. Burkholder, 37 L. D., 660.

A homestead entry made with no intention of establishing a permanent bona fide home upon the land, but merely with a view to submitting a showing sufficient to support commutation must be canceled, notwithstanding the proof offered shows full technical compliance with respect to inhabitancy of the land for the period ordinarily required in commutation cases.

Gilbert Satrang, 37 L. D., 683.

A contract made by a homesteader through which he secures the cultivation of the land by a party who lives on the land with him for such purpose, and is paid for such service out of the crops so raised, is not inconsistent with the maintenance of residence.

Hary v. Gaumnitz, 22 L. D., 298.

The validity of residence is not affected by the fact that the wife refuses to live on the land.

Scott v. Carpenter, 17 L. D., 337.

The fact that the homesteader's wife does not reside with him on the land covered by his entry but lives apart from him, and at her former place of residence, does not prevent him from establishing and maintaining the requisite residence on his homestead claim.

Munson v. Cushing, 21 L. D., 113.

Occupation of land through a tenant is not the maintenance or establishment of residence requisite under the public land law.

Fleming v. Thompson, 17 L. D., 561.

Residence is not acquired by going upon and visiting the land solely for the purpose of complying with the letter of the law. The acts of going upon

the land, and the occupancy thereof must concur with the intent to make it a permanent home to the exclusion of one elsewhere.

Ferslot v. Crary, 26 L. D., 165.

Mistakes such as location of the land outside of the claim or location of the house upon the land, or that the improvements are within the enclosure of another do not impeach the good faith of the entryman.

"A husband and wife, living as one family, cannot maintain separate residences at the same time and in the same house, so that each by virtue of said residence may perfect an entry under the homestead law."

L. A. Tavener, 9 L. D., 426.

"Husband and wife, while living together in such relation, cannot maintain separate residences at the same time in a house built across the line between two settlement claims, so that each can secure a claim by virtue of such residence."

Thomas E. Henderson, 10 L. D., 566.

John O. and Minerva C. Garner, 11 L. D., 207.

Stella G. Robinson, 12 L. D., 443.

William A. Parker, 13 L. D., 734.

The failure of a homesteader to maintain residence will be excused, where by intimidation and armed violence he is driven from the land and by such means prevented from return thereof.

Reed v. Heirs of Plummer, 12 L. D., 512.

The continuity of a homesteader's residence is not affected by temporary absence resulting from illness and the necessity of earning money for the maintenance of the claim and personal support.

28 L. D., 503.

Engagement in public service will not be construed into an abandonment so long as such efforts are made to maintain improvements as manifest good faith.

Tomlinson v. Soderlund, 21 L. D., 155.

"In the case of a homesteader who holds an appointment as postmaster, the Department will not, in passing upon the compliance with law in the matter of residence, undertake to determine whether such residence is compatible with the statutory requirement that 'every postmaster shall reside within the delivery of the office to which he is appointed.' " Overruling Hansbrugh case, 5 L. D., 155.

For regulations concerning residence of postmasters and other officials holding public office see page 44, title "Leave of Absence."

## JUDICIAL RESTRAINT:

A plea of "judicial restraint" will not be accepted as a sufficient defence, a charge of non-compliance with the law in the matter of residence and cultivation if the homesteader has not established residence and otherwise complied with the law prior to the time when he was placed under such restraint.

Judicial restraint such as conviction and sentence to the penitentiary for life will excuse residence from the land.

Anderson v. Anderson, 5 L. D., 6.

"A charge that the settler has changed his residence is not sustained by evidence which shows that the alleged absence was the result of judicial compulsion."

Cane et al. v. Devine, 7 L. D., 532.

See also Bohall v. Dilla, 114 U. S., 49.

"After residence is once established the continuity thereof is not broken by absence from the land caused by judicial restraint."

10 L. D., 551.

A homestead entry canceled for failure to make final proof within the statutory period, such failure being due to the entryman's arrest and conviction on a criminal charge, cannot be reinstated in the presence of an intervening adverse claim.

Ayers v. Brownlee, 15 L. D., 550.

A charge of abandonment resulting from judicial restraint must result in dismissal of contest.

Readhead v. Hauenstine, 15 L. D., 554.

Absence in prison under judicial restraint will not be considered residence toward making up the period of eight months required by Sec. 9 of the Act of May 29, 1908.



E. N. McGlothian, 36 L. D., 502.

"The distinction between commutation and final proof in relation to the element of time within which full compliance with law may be shown demands a higher proof of good faith on the part of an entryman who elects to complete his entry and acquire title within the limited period allowed by commutation than is required in the case of ordinary proof after five years' compliance with the law."

"A homestead entryman by his election to commute assumes the burden of showing full compliance with law in the matters of residence, improvement, and cultivation, and the proof will not be accepted by the land department unless it shows the substantially continuous presence of the claimant upon the land for the required period."

See case of Fred Lidgett, 35 L. D., 371.

Under instructions from the Department dated September 24, 1910 (39 L. D., 230), it was held that (syllabus):

"Credit for residence will not be allowed during the time the land is not subject to entry by the person maintaining residence."

The above instructions were modified by the Department under date of May 17, 1911, in the ex parte homestead case of Martha Sullivan, formerly Martha Feigum (unpublished), Lemmon series 020673, wherein it was held that the instructions of September 24, 1910, should not be considered retroactive so as to defeat proof which was offered and accepted in accordance with the practice theretofore prevailing.

The instructions in question were further modified by the Department under date of August 7, 1911, in a letter to this office, wherein it is held that a contestant who established his residence and also filed his contest prior to September 24, 1910, and maintained his residence, may receive credit for the time he resided upon the land before the cancellation of the entry which he contested.

You will exercise care in adjudicating claims that are governed by the above instructions.

The foregoing is from circular No. 47, dated August 21, 1911.

Every fact necessary and essential to entitle claimant to make final proof must appear affirmatively from the proof.

U. S. v. Skahen, 6 L. D., 120.

Parks' case, 6 L. D., 549.

Garlies' case, 6 L. D., 310.

## IMPROVEMENTS:

The Land Department has no jurisdiction over disputes between settlers concerning their claims against each other on account of alleged improvements.

See case of Winn v. Saunders et al., 20 L. D., 3.

Rights as to the ownership or possession of improvements placed on public lands without authority of law, are not determined by a judgment of the Department sustaining the validity of an entry of said land.

Wheeler v. Rogers, 28 L. D., 250.

The words "cultivation" and "improvement" used synonymously by the Department in considering cash entries.

Adelphi Allen, 6 L. D., 420.

## CONTESTS.

1. Grounds of contest.
2. Contestant.
3. Homestead Entries.
4. Desert Entries.
5. Reclamation Homesteads.
6. Three-Year Homestead.
7. Preference Right of Entry.
8. Rules of Practice.
9. Relinquishments.

1. Contests may be initiated against an entry for any cause which affects the validity of the same. It may be brought upon

any ground which would disclose the disqualification of the entryman. It is impossible to give the grounds of contests in detail. The most prolific ground of contest is that of failure to establish and maintain residence on the land as required by law; failure to improve and cultivate the same as required by law, and abandonment for a period of more than six months.

2. Contestant (See Rules of Practice.)

3. Homestead Entries. (See paragraph 1. See Homestead Entries, Proofs, Reclamation, and Rules of Practice.)

4. Desert entries may be contested for failure to comply with the law applicable to the same, or failure to make annual or final proof within the time allowed by law, or for any cause which would affect the validity of the entry, or disqualify the entryman.

5. Reclamation Homesteads. (See Reclamation of Arid Lands.)

6. Three-Year Homestead Law. This law is a new one, and while the law in force regarding contests against this entry so far as they may be applicable will control, yet doubtless many new questions will arise affecting the right to perfect the same. We have compiled all regulations and instructions so far issued, and they will be found by consulting the title "Three-Year Homestead Law."

7. Preference Right of Entry. (See also Rules of Practice.)

[Circular.]

## REGULATIONS.

Department of the Interior,  
General Land Office,  
Washington, D. C., September 15, 1910.

Registers and Receivers,  
United States Land Offices.

Gentlemen: In accordance with departmental instructions contained in the decisions in the cases of Crook v. Carroll (37 L. D., 513), James v. Stanley (37 L. D., 560), and William J. Stock v. Oscar E. Herman and James Gibson (39 L. D., —), the following regulations are issued for your guidance:

(a) 1. In order to entitle a contestant to the preference right of entry conferred by Sec. 2 of the Act of May 14, 1880 (21 Stat., 140), it must appear not only that he has contested the entry and paid the land office fees in that behalf, but that he has actually procured the cancellation of the entry.

(b) 2. Where a good and sufficient affidavit of contest has been filed against an entry and no notice of contest has issued on such affidavit, or, if issued, there is no evidence of service of such notice upon the contestee, if the entry under attack should be relinquished, you will, as heretofore, immediately note the cancellation of the entry upon the records of your office. In such cases for purposes of administration a presumption will obtain that the contest induced the relinquishment and no other entry of the land will be allowed until the following proceedings are had. If the relinquishment is filed by a person other than the contestant, you will at once notify the contestant thereof that he may take appropriate steps to make the entry if desired. To that end you will suspend all applications filed by others than the contestant within the period awarded successful contestants to make entry; should the contestant during this period present application, in the absence of other intervening application, his entry will at once be allowed, but if an intermediate application has been filed by another, you will at once notify such intervening applicant of the claimed rights of the contestant and that it will be necessary for him, the intervening claimant, to show, if he desires, that the relinquishment was not the result of the contest, and that in the event he, within twenty days from the receipt of such notice, apply for a hearing for that purpose, the same will be ordered with at least thirty days' notice to all interested parties, otherwise the intermediate application will be rejected and contestant's application allowed. At said hearing it shall be competent for the contestant to show that the former entryman or some one in privity with him in



the sale or purchase of the relinquishment had knowledge of the filing of the affidavit of contest, in rebuttal of any showing made by the applicant. If it satisfactorily appear from the testimony that the relinquishment was not the result of the contest, the intermediate applicant will prevail, otherwise the application of contestant will be allowed as in the exercise of a preference right.

(c) 3. Where it appears of record that the defendant has been served with notice of contest personally or by publication, it will be conclusively presumed as a matter of law and fact that the relinquishment was the result of the contest and the contestant will be awarded the preference right of entry without necessity for a hearing.

(d) 4. Where, prior to hearing in a contest, a junior contest is filed, alleging a valid ground for the cancellation of the entry and, in addition thereto, the collusive nature of the prior contest, the junior contestant may, if the entryman has been served with notice of the prior contest, intervene at the hearing and submit testimony in support of his charges. Should the junior contestant elect to offer testimony in support of his charge of collusion only, he will not gain a preference right of entry, if such charge be established. If, at the time of the filing of the junior contest, notice is not issued on the prior contest, you will issue such notice and at the same time notice on the junior contest; the latter notice must recite all the charges contained in the affidavit and state, in addition, that the junior contestant will be allowed to appear at the time set for taking testimony in the prior contest and offer evidence in support of his charges. The junior contestant will be required to serve notice on both the prior contestant and the entryman.

(e) 5. If, before the case proceeds to a hearing, the entryman's relinquishment be filed, both contestants must be notified of the cancellation of the entry and of their right to apply to enter the land within thirty days after the receipt of such notice. Should both apply within such period, you will set a day for hearing, of which each shall have at least thirty days' notice, at which the junior contestant will be allowed to prove his charge of collusion and so defeat the claimed preference right of the prior contestant. An application to enter by a party other than either of the contestants, presented within the preference right period, must be suspended to await the action of the contestants in asserting their preference rights.

(f) 6. Where a junior contest charging collusion is not filed until after the prior contest has proceeded to a hearing, it will be suspended, pending the closing of the latter case, and must wholly fail if the entry be canceled as the result of the prior contest. This, however, will not prevent the junior contestant from attacking the application of the successful contestant to make entry, upon the ground of collusion or for any other valid cause, should the latter attempt to exercise the preferred right of entry, nor, should the prior contest result in favor of the entryman, will the junior contestant be precluded from prosecuting his case if his affidavit, in addition to the charge of collusion, states a sufficient ground for the cancellation of the entry other than the charge involved in the trial of the prior contest.

(g) 7. These regulations are in lieu of departmental regulations of June 1, 1909 (38 L. D., 23).

Respectfully,

September 15, 1910.

Fred Dennett,  
Commissioner.

Approved:

Frank Pierce,  
Acting Secretary.

8. Rules of Practice. All notice of contest must be prepared by the contestant or his attorney. The Land Office officials will not take the time to prepare notices of contest. There is a regulation of the Department to the effect that the Register and Receiver are not required to make up affidavits of contests. We do not give the circular here because it is impossible to publish all such matters. I desire to give the more important features of the regulations. We must make the work as brief as possible consistent with its purpose, so it may be contained in one volume.

(See Rules of Practice.)

9. Relinquishments. (See Relinquishments.)

## **UNITED STATES COMMISSIONERS AND OTHER OFFICERS PREPARING PAPERS IN CONNECTION WITH APPLICATIONS AND FINAL PROOFS IN MATTERS INVOLVING PUBLIC LAND.**

### **Suggestions.**

We have considered it advisable to give a few suggestions to U. S. Commissioners and others preparing papers in connection with public land. These suggestions are not intended for Registers and Receivers of local land offices. We have compiled a few important laws and departmental regulations under this chapter. It is quite impossible to give them all in detail. What we may suggest will be based upon some law, rule or regulation of the Department, or experience while in the practice.

Care should be exercised to the end that your charges should not be in excess of the fees allowed by law, schedule of which will be found elsewhere. It is a violation of law to impose excess charges, and no doubt persistence in this matter will result in prosecution or removal.

Care should be taken to examine the instruments before delivering the same to the party or sending it to the Land Office to see that the same has been properly signed, the jurats completed, and the seal attached.

The testimony of witnesses and claimant in final proofs must not be taken within the hearing of the other. Attorneys are not permitted to take any part in the examination of a witness making final proof, except in cases of a protest, where the protestant claims the right to question the entryman regarding the truth of his statements relative to his residence.

It has been observed that persons who have been appointed to positions of U. S. Commissioners, Judges and Clerks of Courts and others taking acknowledgments in public land matters, without previous experience, are lost to know just what to do, how to do it, and particularly just what papers to transmit to the Land Office in a given matter. For this reason we have arranged a key which will be found very helpful in such matters.

The index to forms should be consulted to determine the kind of application to prepare. If it is a second entry, special affidavit must accompany the same showing qualification. By consulting the title treating the character of the entry to be made you will find a statement showing what the application should contain. For example:

Suppose you are about to prepare an application for a second homestead entry under the Act of February 3, 1911. You will consult the chapter on Second Homestead Entries. You will find that such application must be corroborated. You will find a reference to form used, either approved, or one which will show a substantial compliance so far as the law may relate. If the application is one under the equitable rule, consult that chapter the same as you did the first, and this will give you the mode of procedure, and will inform you as to what papers must go to the Land Office. Applications of this character not accompanied by the special affidavits will result in a suspension by the Register and Receiver, but



in such event a reasonable length of time is usually allowed in which to file the same.

In all applications for public lands, if the party is not a native born citizen of the United States, evidence of citizenship must accompany the same.

Applications made subject to the Act of June 22, 1910, should contain the following notation:

Application made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910 (36 Stat., 583).

In cases of final proof, and in cases where hearing has been set before some qualified officer within the district, by the Register and Receiver, it is the duty of such officer to transmit the record, together with the fees due the Land Office. There is no obligation on the part of the officer to transmit applications to the Land Office, although this has become the practice. When doing so the proper and necessary fees and commissions or payment money must accompany the application. The officer's duty ends with the acknowledgment.

### **Money.**

Only currency or postoffice money order will be accepted by the Receiver of the District Land Office. Checks and drafts will not be accepted. It is contrary to regulations to do so, and delay will be avoided by following this rule strictly. Applications unaccompanied with the necessary money will be rejected, and the land applied for will not be segregated.

### **Papers and Arrangement Thereof.**

In preparing and transmitting contest records the following rules must be observed:

[Circular No. 48.]

#### **PREPARATION OF TRANSCRIPT OF TESTIMONY.**

Department of the Interior,  
General Land Office,  
Washington, D. C., August 19, 1911.

Registers and Receivers,  
United States Land Offices.

Gentlemen: To avoid the transmission here of incomplete records in contest cases, you will prepare, or cause to be prepared, the transcripts of testimony in litigated matters to show—

1. The names of the parties, date and place of hearing, and name of the officer taking the testimony.
2. The appearance made by either party, whether general or special, and, if represented by an attorney or agent, the post-office address of such representative.
3. The names of the various witnesses called and sworn, by whom called, and the name of the attorney or person conducting the examination both in chief and otherwise.
4. If any motions or objections are made they should be fully transcribed, giving the name of the party making the same; and the ruling thereon, if any, should be carefully noted.
5. When either party rests his case, such fact should be noted. Any adjournments in the taking of testimony should also be noted.
6. A complete index should accompany each record.

The contest clerk should be carefully instructed in order that records may show just what proceedings were had at the hearing.

Very respectfully,

Fred Dennett,  
Commissioner.

## **Matters to Observe in Preparing and Transmitting Applications to Land Office.**

1. Is the land vacant, and subject to the application about to be presented?

2. Is the land withdrawn for irrigation or reservoir purposes, or is it subject to the Act of June 22, 1910? If subject to the last mentioned Act, was settlement made thereon by applicant prior to such date?

3. If the application is made subject to the Act of June 22, 1910, have the proper notations been noted on the application before transmission? (See suggestions this title.)

4. Has the land been classified?

5. Is the applicant qualified to make entry of the land, and have his qualifications been fully shown?

Having determined the character of application, observe the following items:

(a) Is the applicant a citizen? If not, evidence of citizenship should accompany the application, or it will be suspended for such evidence when it reaches the Land Office.

(b) How much money should accompany the application? Consult table of fees and commissions for the State in which land is located. Pages — to —.

(c) Money order should be obtained in the name of the remitter in favor of ———, Receiver U. S. Land Office at ———, State of ———.

(d) Are special affidavits required? If so, the applicant should make an effort to send them with the papers. When, however, this is impossible because of failure to secure witnesses, or record facts, they should follow within thirty days.

(e) Is the application for lands within a reclamation project under the Act of June 17, 1902? If so, he should present application in accordance with official orders relating to such project. Generally Form 4-007 is used with form of water right A4-021, except in cases of assignment of water right by previous entryman, in which case Form A1-4-021a is used with 4-007.

The above rules should be followed in the following cases:

Applications for Isolated tracts, Timber and Stone, Declaratory Statements, Coal purchase, and in fact all applications for public lands.

### **Desert Entries.**

1. All the above items should be observed, with these added:

2. Is the applicant a citizen of the State in which the land is located? If not, he is disqualified from making desert land entry.

3. Two witnesses must be furnished. (See form 4-274 for information which witness should possess.)

4. Map, plat or diagram showing plan of irrigation should accompany the application. It should be verified. (See form page —.)

5. Twenty-five cents per acre for the land applied for.

### **Proofs.**

We submit a key showing the papers that should accompany final proof papers. It is quite impossible to give every paper necessary, as it frequently occurs when special papers and affidavits



must be furnished. However, speaking generally, we believe that if this key is followed in most cases at least the proof will be complete.

1. Deposition of claimant.
2. Deposition of two witnesses.
3. If naturalized, evidence of citizenship or affidavit that such evidence was furnished at time of filing.
4. Non-alienation affidavit.
5. Affidavit of publisher showing legal publication.
6. If proof not submitted on the day advertised, affidavit stating reasons therefor. Proof must be submitted within 10 days of the day advertised. (See proofs —.)
7. Affidavit correcting spelling names of witnesses, in case any are erroneously spelled, showing the name advertised and the witness to be one and the same person.
8. Special affidavit that may be required by the nature of the proof.
9. While the filing papers are not required, they often serve to aid the Land Office in checking the entries, and the practice seems to be to forward them with the final proof.
10. Reports field division, application to make, will be supplied by the Land Office.
11. Money order for testimony-fees at rate prevailing in district. (See Schedule.)

#### **Desert Proofs.**

Yearly: Affidavit of claimant and two witnesses. (See Form —.)

Third Year: Affidavit of claimant and two witnesses as above, with the following added: Map, plat, or diagram, showing the system of irrigation, the character of the reclamation, and the extent thereof. Map must be verified, showing that the plan of irrigation submitted has reclaimed the land from desert to agricultural in character.

#### **Desert Final Proof.**

- (1) Deposition of applicant.
- (2) Deposition of two witnesses.
- (3) Map, verified, showing land reclaimed, showing character of land not capable of being irrigated from system of irrigation.
- (4) Affidavit of publisher.
- (5) Evidence of citizenship.
- (6) Evidence showing title to sufficient water supply to permanently irrigate the land.
- (7) One dollar per acre for land embraced in entry.

See Water Rights Adjudication.

In isolated tracts, timber and stone, coal, oil, gas, petroleum, mineral, parks and townsites, proofs are made before the Register and Receiver. The papers necessary to accompany the same will be found with the regulations covering each subject.

#### **Contests.**

Contests should not be transmitted to the Land Office unless the notices of contests are prepared so that all there is to do will be to have the signature of the Register or Receiver attached.

See Rules of Practice. See Contestant.

In administering an oath to a witness call his attention to the purport of section 5392 of the Revised Statutes, advising him that in the event he should swear or declare or depose falsely in the matter the Government will prosecute him to the full extent of the law.

Don't undertake to couple the position of U. S. Commission with that of a locator, nor undertake to act in the capacity of attorney for anyone in a proceeding which may be pending or which may be set for hearing before you.

Forward papers immediately to the local land office for your district. Be careful that papers are forwarded to the proper office, as neglect in this respect will occasion delay, which may result in a loss of the land applied for.

While the local land office will accommodate you with a few blanks in given cases, you should not ask them to furnish you with supplies. This they are not permitted to do. You should provide yourself with supplies, and they should be in form prescribed by regulations. We have included a list of some of the most important forms deemed necessary for use outside of local land offices. Many of these are approved forms, while others are intended to present a substantial compliance with law concerning which no form has been approved. In using the forms for typewriting purposes, you should be careful to follow the notes, so that all the material matters may appear on the form. These notes have been used so as to avoid a duplication of publication of such matters.

Study official circulars and regulations published herein covering the kind of entry or proof under consideration.

### **CLAIMS—PRIVATE.**

Congress having confirmed and directed a survey of a private land grant, it is not within the province of the Land Department to question its integrity and validity.

If there is a doubt as to the translation of the original title papers relating to a private land grant, the Land Department must be guided by the translation which the Government gave to the Surveyor General and the course of the proceedings leading up to the confirmation of the grant.

Where conflicting land grants have been confirmed by Congress, each without any reference to the other, it is the duty of the Land Department to follow the confirmation of the survey and patent of each grant, leaving to the judicial tribunal the determination of all matters of priority and superiority that originate in the way of conflict where the confirmatory Act provides that the survey of the private land grant "shall conform to and be connected with the public survey of the United States so far as the same can be done consistently with land marks and boundary specifications in the grant" and on account of the absence of public survey in the vicinity of the land it appears to be impracticable to make a survey conform to and be connected with the public surveys, the same will not be required. The cost of survey of private land claims shall be paid by the claimant after the completion of the survey and prior to the issuance of patent.



The Land Company of New Mexico, Limited, et al., 31 L. D. 202.

For further information upon the subject consult Instructions of July 24, 1901, 31 L. D., 45. Also table of Circulars, Instructions, and Regulations. Edgar, Trustee of the Roman Catholic Church v. Delback, 31 L. D., 39; 31 L. D., 332; 31 L. D., 344; 31 L. D., 346; 37 L. D., 65; 37 L. D., 285; 37 L. D., 480; 37 L. D., 509; 37 L. D., 536; 32 L. D., 11; 32 L. D., 83; 32 L. D., 286; 32 L. D., 287; 32 L. D., 370; 32 L. D., 492; 34 L. D., 67; 34 L. D., 136; 34 L. D., 144; 34 L. D., 242; 34 L. D., 276; 34 L. D., 506; 35 L. D., 93; 35 L. D., 123; 35 L. D., 258; 35 L. D., 602.

Chap. 212. An Act to amend an Act entitled "An Act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March third, eighteen hundred and ninety-one, and the Acts amendatory thereto, approved February twenty-first, eighteen hundred and ninety-three, and June twenty-seventh, eighteen hundred and ninety-eight.

Approved February 26, 1909.

60 Congress, Public No. 277, Page 655.

### **CONFLICTING CLAIMS—ADJUSTMENT.**

Regulations under Act of July 1, 1898, 30 Stat., 597, 620, to facilitate the adjustment of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, approved February 14, 1899, were supplemented with regulations of June 15, 1901, 30 L. D., 620.

### **ADJOINING FARM HOMESTEADS.**

A person possessing the requisite qualifications under the homestead law (not having exhausted his right by previous entry thereunder), owning and residing on land not amounting in quantity to a quarter section, may enter other land lying contiguous to his own to an amount which shall not, with the land already owned by him, exceed in the aggregate 160 acres. For instance, if he has purchased or obtained from the Government (not under the homestead law) or from any other party 40 acres of land, he can, under the provisions of the homestead law, enter 120 acres adjoining; if he is the owner of 80 acres he can enter another 80 acres; if he is the owner of 120 acres he can enter 40 acres additional (Sec. 2289, Rev. Stat.). The party must fulfill the requirements of the homestead law as to residence and cultivation, but will not be required to remove from the land which he originally owned in order to reside upon and cultivate that which he thus acquires under the homestead law, since the whole 160 acres are considered as constituting one farm or body of land, residence of and cultivation of a portion of which is equivalent to residence upon and cultivation of the whole, except that patent for the adjoining homestead will not be issued until five years from date of entry thereof.

Adjoining farm entries under Sec. 2289 of the Revised Statutes are not to be confounded with additional entries under other statutes.

### **GENERAL COAL-LAND LAWS AND REGULATIONS THEREUNDER.**

1. Sale of coal lands.
2. Entry of coal lands.
3. Entry by individuals.
4. Entry by an association.
5. Number of entries allowed one person or association.
6. Information furnished.
7. Preference right of entry.
8. Authority of local officers to order hearing after entry has been allowed.
9. Authority of local officers to order hearing prior to allowance of entry.
10. Application to purchase otherwise than by preference right.
11. Declaratory statement for preservation of preference right of entry.
12. Time allowed for making final proof and payment.
13. Sixty days and one year limitation.
14. Affidavit for purchase in exercise of preference right.
15. Affidavit for purchase and entry by an association.
16. Verification of applications, declaratory statements, and affidavits.
17. Publication of application.
18. Proof of publication.

19. Form of notice for publication.
  20. Payment.
  21. Delivery of patent.
  22. Adverse rights.
  23. Application for survey.
  24. Rules of practice.
  25. Reports of local officers.
- Coal lands in Alaska. Circular September 7, 1909.  
Miscellaneous regulations. (See pages 307, 187.)

## GENERAL LAND OFFICE CIRCULARS, WITH AMENDMENTS AND SUPPLEMENTS CONCERNING

### COAL-LAND LAWS AND REGULATIONS THEREUNDER.

Department of the Interior,  
General Land Office,  
Washington, D. C., April 12, 1907.

The following coal-land laws relating to the public-land States and Territories and to the district of Alaska, together with the rules and regulations as now applicable, are herewith published for the instruction of the local land officers and the information of intending applicants. All rules and regulations heretofore issued under said laws are hereby abrogated. (See Isolated Tracts.)

### PART I.

#### TITLE XXXII, CHAPTER SIX.

##### MINERAL LANDS AND MINING RESOURCES.

Sec. 2347. Every person above the age of twenty-one years, who

Entry of coal lands, 3 March, 1873, c. 279 s. 1, v. 17, p. 607. is a citizen of the United States, or who has declared his intention to become such, or any association of

persons severally qualified as above, shall, upon application to the Register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the Receiver of not less than ten dollars per acre for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Sec. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: Provided, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.



Sec. 2349. All claims under the preceding section must be presented to the Register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

Sec. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Sec. 2351. In case of conflicting claims upon coal-lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

Sec. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

#### RULES AND REGULATIONS.

1. The sale of coal lands is provided for—
  - (a) By ordinary cash entry under section 2347;
  - (b) By cash entry under a preference right to purchase acquired by compliance with the provisions of section 2348.
2. Coal lands may be entered only after survey and by legal

subdivisions. The lands must be vacant and unappropriated and must contain workable deposits of coal and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal lands."

3. Entry by an individual may be made only by a person above the age of 21 years who is a citizen of the United States or has declared his intention to become such, and shall not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land law.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than \$5,000 in working and improving a mine or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold any other coal lands thereunder. The right so to enter or hold is exhausted whether an entry embraces in any instance the maximum area allowed by the law or less; also by the acquisition of a preference right of entry unless sufficient cause for the abandonment thereof is shown. Assignment of a preference right of entry under section 2348, Revised Statutes, will not hereafter be recognized.

6. Information will be furnished registers and receivers by the Commissioner of the General Land Office of the price at which all coal lands in their respective districts will be offered. The local land officers will from time to time be furnished with schedules and maps (1) showing lands known to lie without ascertained coal areas and open to entry under the general land laws, according to the character of each particular tract; (2) showing lands known to contain workable deposits of coal, whereon prices will be fixed upon information derived from field examination; and (3) showing lands containing coal of such character as may, from their location at a distance from transportation lines, be sold at the minimum price fixed by the statute as hereinafter stated.

Local land officers will allow coal entries for lands in the first and third classes at the minimum price fixed by the statute, and for those in the second class at the prices stated in the schedules and maps furnished them. Lands listed in classes 2 and 3 are subject to entry under the coal-land laws only, unless shown by the applicant to be of such character as to be subject to entry under some other law. For those lands listed as of the first and third classes (when entered under the coal-land laws) the price is not less than \$10 per acre when situated more than 15 miles from a completed railroad and \$20 when situated within 15 miles of a completed railroad; and where the lands lie partly without such limit, the higher price must be paid for each smallest legal subdivision the greater part of which lies within 15 miles of such railroad. The term "completed railroad" is construed to mean a railroad actually constructed, equipped, and operating at the date of entry. The distance is to be calculated from the point on such railroad



nearest the lands applied for, and the facts in each case must be shown by the affidavit of the applicant, corroborated by the affidavit of some disinterested credible person having actual knowledge thereof.

7. A preference right of entry accrues only where a person or association of persons, severally qualified, have opened and improved a coal mine or mines upon the public lands and shall be in actual possession thereof and not by the filing of a declaratory statement. A perfunctory compliance with the law in this respect will not suffice, but a mine or mines of coal must be in fact opened and improved on the land claimed.

There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to a preference right under section 2348 of the Revised Statutes. To preserve a preference right of entry specified in the statute the person or association of persons having acquired the same must present to the register of the proper land district, within sixty days from the date of actual possession and commencement of improvements upon the land, a declaratory statement therefor in all cases where the township plat has been filed. When the township plat is not on file at the date of such improvement, such declaratory statement must be presented within sixty days from the receipt of such plat at the district land office.

8. After entry has been allowed the local officers have no authority to order a hearing or make further determination with respect to it, except upon instructions from the General Land Office. They will, however, receive all protests against it and promptly forward them, together with a statement of the facts shown by their records, for consideration and action.

9. Prior to entry it is competent for the local officers to order a hearing on sufficient grounds set forth under oath by any protestant.

10. When it is sought to purchase otherwise than in the exercise of a preference right the party will himself make oath to the following application, which must be presented to the register:

I, \_\_\_\_\_, hereby apply, under the provisions of the Revised Statutes of the United States, relating to the sale of coal lands of the United States, to purchase the \_\_\_\_\_ quarter of section \_\_\_\_\_, in township \_\_\_\_\_ of range \_\_\_\_\_, in the district of lands subject to sale at the land office at \_\_\_\_\_, and containing \_\_\_\_\_ acres; and I solemnly swear that no portion of said tract is in the possession of any other party or parties who has or have commenced improvements thereon for the development of coal; that I am twenty-one years of age; a citizen of the United States (or have declared my intention to become a citizen of the United States), and have never held, except \_\_\_\_\_ or purchased any lands under said act, either as an individual or as a member of an association; that I make this application in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard

thereto; that said land contains workable deposits of coal; that there is not to my knowledge within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

11. Where a preference right of entry is sought to be preserved the required declaratory statement must be substantially as follows:

I, ———, do hereby declare my intention to purchase, in the exercise of a preference right, under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the ——— quarter of section ——— of township ——— of range ———, in the district of the lands subject to sale at the district land office at ———; and I do solemnly swear that I am ——— years of age and a citizen of the United States (or have declared my intention to become a citizen of the United States); that I have never, either as an individual or as a member of an association, held, except ——— or purchased any coal lands under the aforesaid provisions of the Revised Statutes; that I was in possession of, and commenced improvements on, said tract on the ——— day of ———, A. D. 19—, and have ever since remained in actual possession continuously; that I have opened and improved a valuable mine of coal thereon, and have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvements being as follows: (Here describe the nature and character of the improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described land and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

12. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment; but the local officers will allow no party to make final proof and payment except on special written notice to all others who appear on their records as claimants to the same tract. No notice will be given to parties whose declaratory statements have expired by limitation under the law.

13. A declarant will not be permitted to file after the expiration of the sixty days allowed nor to exercise a preference right of purpose after the expiration of the year.

14. When it is sought to purchase, in the exercise of a preference right, the applicant must himself make the following affidavit, which must be presented to the register:

I, ———, claiming, under the provisions of the revised Statutes of the United States relating to the sale of coal lands of the United States, the preference right to purchase the ——— quarter of section ———, in township ——— of range ———, subject to sale at the district land office at ———, hereby apply to purchase and enter the same; and I do solemnly swear that I have not hitherto held, except ——— or purchased, either as an individual or as a



member of an association, any coal lands under the aforesaid provisions of the law; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of \_\_\_\_\_ dollars, the nature of such improvements being as follows: \_\_\_\_\_; that I am now in the actual possession of said mines, and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper. So help me God.

15. Where purchase and entry, whether in the exercise of a preference right or otherwise, is made by an association, each member thereof must subscribe and swear to the application or affidavit, the necessary changes being made to cover the joint possession and expenditure and the purchase and entry in their joint interests.

16. Each application, declaratory statement, and affidavit, forms whereof are given above, must be verified before the register or receiver or some officer authorized by law to administer oaths in the land district wherein the lands involved are situate. (Amendment of Apr. 29, 1908.)

17. Upon the filing of an application to purchase coal lands under the provisions of paragraphs 10 or 14 the applicant will be required, at his own expense, to publish a notice of said application in a newspaper nearest the lands, to be designated by the register, for a period of thirty days, during which time a similar notice must be posted in the local land office and in a conspicuous place on the land. The notice should describe the land applied for and state that the purpose thereof is to allow all persons claiming the land applied for, or desiring to show that the applicant's coal entry should not be allowed for any reason, an opportunity to file objections with the local land officers.

Publication must be made sufficiently in advance to permit entry within the year specified by the statute.

18. After the thirty day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement (including an attached copy of the published notice) that the notice was published for the required period, giving the first and last date of such publication, and his own affidavit, or that of some credible person having personal knowledge of the fact, showing that the notice aforesaid remained conspicuously posted upon the land sought to be patented during said thirty days publication, giving the dates. The register shall certify to the fact that the notice was posted in his office for the full period of thirty days, the certificate to state distinctly when such posting was done and how long continued, giving the dates. In no case shall entry be allowed until the proofs specified have been filed.

The claimant will be required within thirty days after the

expiration of the period of newspaper publication to furnish the proofs specified in said paragraph and tender the purchase price of the land. Should the specified proofs and purchase price be not furnished and tendered within this time, the local land officers will thereupon reject the application, subject to appeal. Furthermore, in the exercise of a preference right to purchase, no part of the thirty-day period specified herein may extend beyond the year fixed by the statute. (Amendment of Nov. 30, 1907.)

19. Of the following forms, the one appropriate to the sections of the Revised Statutes under which application is made should be used for publication of all notices of application to enter coal lands:

4-365.

**Notice for Publication. Coal Entry. (Section 2347, R. S.)**

.....Land Office.

....., 19....

Notice is hereby given that ....., of ....., County of ....., State of ....., has this day filed in this office his application to purchase, under the provisions of Section 2347, U. S. Revised Statutes, the ..... of Section No. ..., Township No. ..., Range No. ....

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by the applicant, should file their affidavits of protest in this office during the thirty-day period of publication immediately following the first printed issue of this notice, otherwise the application may be allowed.

....., Register.

4-366.

**Notice for Publication. Coal Entry. (Secs. 2348-52, R. S.)**

.....Land Office.

....., 19....

Notice is hereby given that ....., of ....., County of ....., State of ....., who, on the ..... day of ....., 19..., filed in this office his coal declaratory statement for the ..... of Section No. ..., Township No. ..., Range No. ..., has this day filed in this office his application to purchase said land under the provisions of Sections 2348 to 2352, U. S. Revised Statutes.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by the applicant, should file their affidavits of protest in this office during the thirty-day period of publication immediately following the first printed issue of this notice.

....., Register.

20. When it is sought to purchase, either by ordinary cash entry or in the exercise of a preference right, the register, if he finds the tract applied for is vacant, surveyed, and unappropriated, and that the claimant has complied with all the laws and regulations relating to the acquisition of coal lands, will so certify to the receiver, stating the prescribed purchase price, and the applicant must then pay the same.

21. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land Office, whence, if the proceedings are found to be regular, a patent will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington or by the register at the district land office.

22. An application for cash entry will be subject to any valid adverse right which may have attached to the same land pursuant to section 2348, Revised Statutes.

23. Qualified persons or associations who are lawfully in pos-



session of tracts of coal lands which are still unsurveyed may, under sections 2401, 2402, and 2403, Revised Statutes, as amended by the Act of August 20, 1894, apply to the Surveyor-General for the survey of the township or townships, or portions thereof, embracing the lands claimed, to be specified as nearly as practicable. Each such application must be accompanied by the affidavit of the applicant or applicants, duly corroborated by at least two competent persons, setting forth the qualifications of the former as claimant or claimants of the land, the facts constituting their possession, the character of the land, and such other facts in the case as are essential in that connection. If the Surveyor-General approves the application he will thereupon transmit it to the General Land Office with the affidavits and his report.

24. The "Rules of practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior" will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal lands.

25. Local officers will report at the close of each month as "sales of coal lands" all filings and entries in separate abstracts, commencing with No. 1 and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal lands they will continue the same without change.

## PART II.

### COAL LANDS IN ALASKA.

[Act June 6, 1900 (31 Stat., 658.)]

An Act to Extend the Coal-land Laws to the District of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public-land laws of the United States are hereby extended to the district of Alaska as relate to coal lands, namely, sections twenty-three hundred and forty-seven to twenty-three hundred and fifty-two, inclusive, of the Revised Statutes.

[Act April 28, 1904 (33 Stat., 525.)]

An Act to Amend an Act Entitled "An Act to Extend the Coal-land-laws to the District of Alaska," Approved June Sixth, Nineteen Hundred.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or association of persons qualified to make an entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this Act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a refer-

ence to such natural objects or permanent monuments as will readily identify the same.

Sec. 2. That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the Surveyor-General for the district of Alaska, and a payment of the sum of ten dollars per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the district of Alaska published nearest the location of the premises for a period of sixty days, and shall have caused copies of such notice, together with a certified copy of the official plat of survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws: Provided, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

Sec. 3. That during such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein.

Sec. 4. That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this Act shall continue and be in full force in the district of Alaska.

#### **RULES AND REGULATIONS.**

1. Persons or associations of persons locating or entering coal lands in the district of Alaska under the provisions of the Act of April 28, 1904 (33 Stat. L., 525), amendatory of the Act of June 6, 1900 (31 Stat. L., 330), are required to possess the qualifications of persons or associations making entry under the general coal-land laws of the United States, and are subject to the same limitations.

2. The lands must be vacant and unappropriated, and must contain deposits of coal, and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal lands."

3. Entry by an individual may be made only by a person above the age of 21 years, who is a citizen of the United States, and shall



not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land law.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than \$5,000 in working and improving a mine or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold other coal lands thereunder. The right so to enter or hold is exhausted, whether an entry embraces in any instances the maximum area allowed by the law or less.

6. There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to the right to apply for patent.

7. The requirement of the statute with respect to the form of the tract sought to be entered is construed to mean that the boundary lines of each entry must be run in cardinal directions, i. e., due north and south and east and west lines, by reference to a true meridian (not magnetic), with the exception of meander lines on meanderable streams and navigable waters forming a part of the boundary lines of a location. Those meander lines which form part of the boundary of a claim will be run according to the directions in the Manual of Surveying Instructions, but other boundary lines will be run in true east and west and north and south directions, thus forming rectangles, except at intersections with meandered lines.

8. The permanent monuments to be placed at each of the four corners of the tract located may consist of—

First. A stone at least 24 inches long, set 12 inches in the ground, with a conical mound of stone  $1\frac{1}{2}$  feet high, 2 feet base, alongside.

Second. A post at least 3 feet long by 4 inches square, set 18 inches in the ground, and surrounded by a substantial mound of stone or earth.

Third. A rock in place; and, whenever possible, the identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, or other objects, permanent objects being selected for bearings whenever possible.

9. It is further provided by the first section of the act that within one year from the date of the passage of the act or within one year from making the location there shall be filed for record in the recording district and with the register and receiver of the land district in which the land is situated a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same. In other words, the notice should contain a complete description in

every particular of the claim as it is marked and monumented upon the ground.

10. By the second section of the act the locator or his assigns is allowed three years from the date of filing the notice prescribed in the first section of the act within which to file an application with the local land officers for a patent for the land claimed. It will thus be seen that persons or associations of persons claiming coal lands in that district at the date of the passage of the act have four years from location or from the date of the act within which to present their applications for patent.

11. Persons or associations of persons who fail to record their notices within the time prescribed by the first section of the act, or fail to file application for patent in the time prescribed by the second section, forfeit their rights to the particular tract located.

12. With the application for patent the claimant must file a certified copy of the plat of survey and field notes thereof made by a United States deputy surveyor or a United States mineral surveyor, duly approved by the Surveyor-General of the district of Alaska. Under this clause of the act it will be allowable for the claimant, at his own expense, to procure the making of a survey by one of the officials mentioned without first making application to the Surveyor-General, but the survey when made is to be submitted to and approved by the Surveyor-General and by him numbered serially.

13. The survey must be made in strict conformity with or be embraced within the lines of the location as appears from the record thereof with the recorder in the recording district, and must be made in according with the regulations relative to lode and placer mining claims so far as they are applicable.

14. Upon the presentation of an application for patent, if no reason appears for rejecting it, it will be received by the register and receiver and the claimant required to publish a notice thereof for the period of sixty days in a newspaper in the district of Alaska published nearest the location of the particular lands, and to cause a copy thereof, together with a certified copy of the official plat of survey, to be posted and remain posted throughout the period of publication in a conspicuous place upon the land applied for, and the register will post a copy of such notice and official plat in his office for the same period. When the notice is published in a weekly newspaper nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

15. The notice so published must embrace all the data given in the notice posted upon the claim and in the local land office. In addition to such data, the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, if there is one, and fix the boundaries of the claim by courses and distances.

The publication in the newspaper and the posting upon the land and in the local land office must cover the same period of time.

16. Upon the expiration of the sixty-day period prescribed the



claimant may file in the local land office a sworn statement from the office of publication, to which shall be attached a copy of the notice published, to the effect that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during the sixty-day period of publication, giving the dates. The register will also file with the record a certificate showing that the notice and plat were posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

Not earlier than six months after the expiration of the period of publication, if no objections are interposed or adverse claim filed, entry may be allowed upon payment of the price per acre specified by the act, which is \$10 per acre in all cases.

17. The proviso to the second section of the act is as follows:

That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

The term "shore" is defined to mean the land lying between high and low water marks of any navigable waters within said district.

18. Section 3 provides for the assertion by any person or association of persons of an adverse claim, and requires that such adverse claim shall be filed during the period of posting and publication or within six months thereafter; that it shall be under oath, and set forth the nature and extent thereof.

19. An adverse claim may be verified by the oath of the adverse claimant or by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated, and when verified by such agent or attorney in fact he must distinctly swear that he is such agent or attorney in fact and accompany his affidavit by proof thereof. The adverse claimant should set forth fully the nature and extent of the interference or conflict by filing with his adverse claim a plat showing his entire claim and its situation or position with relation to the one against which he claims; whether he claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance or duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or, if the transaction was a merely verbal one, he will narrate the circumstances attending the purchase, the date thereof, and amount paid, which facts will be supported by the affidavits of one or more witnesses, if any were present at the time; and if he claims as locator, he must file a duly certified copy of the location notice from the office of the proper recorder and his affidavit of continued ownership.

20. Upon the filing of such adverse claim within the sixty days period of posting and publication, or within six months thereafter, the party who files the adverse claim shall, under the act, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska.

21. All papers filed should have indorsed upon them the precise date of filing; and upon the filing of an adverse claim within the time prescribed by the statute all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notice and plat and filing the necessary proof thereof, until final adjudication of the rights of the parties. In cases of final judgment rendered the party entitled under the decree must, before he is allowed to make entry, file a certified copy thereof.

22. Where such suit has been dismissed a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient. Where no suit has been commenced against the application for patent within the statutory period, a certificate to that effect by the clerk of the Territorial court having jurisdiction will be required.

23. In connection with the foregoing, it is to be borne in mind that by section 4 of the act it is declared:

That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this Act shall continue and be in full force in the district of Alaska.

24. An assignment to a qualified person of a preference right of entry under the Act of April 28, 1904, will be recognized when properly executed. Proof and payment by the assignee must be made, however, in the same manner and within the same time as though there had been no assignment.

25. The following forms for notice of location and application for patent should be used:

#### NOTICE OF LOCATION.

I, ———, of ———, having on the ——— day of ———, 19—, opened and improved a coal mine on the following-described tract (here describe the lands by metes and bounds in rectangular form with north and south boundary lines run according to the true meridian, and a reference to such natural or permanent objects as will readily identify the same), do hereby locate the same as provided by the Alaska coal-land Act of April 28, 1904 (33 Stats., 525); and I do solemnly swear that I am a citizen of the United States (or have declared my intention to become a citizen of the United States); that I am over the age of 21 years; that I have never either as an individual or as a member of an association held, except ———, or purchased any coal lands of the United States; that I have remained in actual possession of said land continuously since the ——— day of ———, 19—; that I have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvement being as follows (here describe the nature and character of such improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described lands and with each and every portion thereof; that my knowledge of said lands is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable



deposits of gold, silver, or copper or other minerals. So help me God.

Dated —, 19—. (Jurat.)

#### APPLICATION FOR PATENT.

I, —, —, claiming under the provisions of the Act of April 28, 1904 (33 Stats., 525), amendatory of the Act of June 6, 1900 (31 Stats., 658), extending the coal-land laws to the district of Alaska, do hereby apply to purchase the land described in the accompanying field notes and plat and subject to sale at the district land office at —, Alaska; and do solemnly swear that my title to said tract is as follows: — as will more fully appear by the certified copy of location notice and abstract of title filed herewith; that I am above the age of 21 years, and a citizen of the United States; that I have not hitherto held, except —, or purchased, either as an individual or as a member of an association, any coal lands under the provisions of the coal-land laws; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of — dollars, the nature of said improvements being as follows: —; that I am now in the actual possession of said mines and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every portion thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, copper, or other minerals. So help me God.

(Jurat.)

26. The notice of location and the application for patent, the forms of which are given above, may be sworn to by the claimant before any officer authorized by law to administer oaths, but the authority of said officer must be properly shown.

27. Any party duly qualified under the law, after swearing to his notice of location or application for patent, may, by a sufficient power of attorney duly executed under the laws of the State or Territory in which such party may be then residing, empower an agent to file with the register of the proper land office the notice of location or application for patent, and also authorize him to make payment for and entry of the lands in the name of such qualified party; and when such power of attorney shall have been filed in the local land office such agent may act thereunder as indicated, but no person will be permitted to act as such agent for more than four applicants.

28. Where a claimant shows by affidavit that he is not personally acquainted with the character of the land, any qualified person may make the required affidavit as to its character; but whether

this affidavit is made by the claimant or by another it must be corroborated by the affidavits of two disinterested and credible witnesses having personal knowledge of the facts.

29. The "Rules of practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior," will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal lands.

30. Local officers will report at the close of each month as "sales of coal lands" all filings and entries in separate abstracts, commencing with number one and thereafter proceeding consecutively in the order of their reception.

Where a series of numbers has already been commenced by sale of coal lands, they will continue the same without change.

R. A. Ballinger,  
Commissioner.

Department of the Interior, April 12, 1907.

Approved.

James Rudolph Garfield,  
Secretary.

Department of the Interior,  
General Land Office,  
Washington, D. C., June 27, 1908.

Registers and Receivers, United States Land Offices, Alaska.

Sirs: The instructions of the General Land Office, dated March 3, 1908, relative to the time within which applications to purchase coal lands in Alaska under the Act of April 28, 1904 (33 Stat., 525), must be perfected is amended to read as follows:

Your attention is called to the fact that the coal-land law of April 28, 1904 (33 Stat., 525), provides that locators or their assigns may, at any time within three years after filing the notice prescribed by the first section of the Act, make application for patent for the land claimed.

This does not mean that if the application is filed at an earlier time than that allowed, the claimant may defer payment for his claim and making entry for a period of time which added to the time between filing the location notice and submitting the application for patent, will equal three years.

When the claimant files his application for patent he waives the unexpired portion of the three years fixed by the statute and must, thereafter, diligently proceed to make publication and submit the proofs prescribed by the statute and the regulations.

Paragraph 16 of the regulations of April 12, 1907 (35 L. D., 673), provides that payment and entry may be made not earlier than six months after the expiration of the period of publication. The law does not contemplate that this time be extended an unreasonable period at the option of the claimant, but that after the filing of the application, the case proceed regularly to entry. Accordingly, should the specified proofs and purchase price be not furnished and tendered within six months from the expiration of the six months within which adverse claims may be filed, or within six months after the final termination of adverse proceedings instituted under Section 3 of the Act, you will reject the application subject to appeal: Provided, That the period of six months herein fixed within which to perfect entry shall be allowed in case of pending applications which have not been perfected within the ninety days specified by the instructions of March 3, 1908, the time to run from date hereof.

This is not intended in any way to modify the circular instructions of May 16, 1907, copy inclosed herewith.

Very respectfully,

S. V. Proudfit,  
Acting Commissioner.

Approved, June 27, 1908.  
Frank Pierce,  
Acting Secretary.



Department of the Interior,  
General Land Office,  
Washington, D. C., July 11, 1908.

Registers and Receivers, United States Land Offices,  
and United States Surveyor-General, District of Alaska.

Gentlemen: Herewith is copy of Act of Congress approved May 28, 1908, Public No. 151, relating to existing unpatented coal claims in the district of Alaska.

CONSOLIDATION OF CLAIMS, MAXIMUM AREA.

The said Act provides a method whereby qualified persons, their heirs or assigns, who initiated coal claims in Alaska prior to November 12, 1906, may consolidate their claims through the means of associations or corporations which may perfect entry and acquire title to contiguous locations, such consolidated claims not to exceed 2,560 acres of contiguous lands nor to exceed in length twice the width of the tract thus consolidated and applied for.

QUALIFICATIONS OF APPLICANTS FOR CONSOLIDATED CLAIM.

When application is made by an association of persons, each member thereof must be shown to be qualified to make entry under the coal-land laws applicable to Alaska, and to be the owner, by location, inheritance, or purchase, of an undivided interest in the consolidated claim. Proof of the qualifications of the applicants may consist of their own affidavits. The application for patent may be executed and filed by the duly authorized agent of the members of the association.

A corporation applying to consolidate its claims must show at date of application that not less than 75 per cent of its stock is held by persons qualified to enter coal lands in Alaska, and to this end each such application must be accompanied by a list of the stockholders, showing their respective holdings of stock in the corporation, and the personal affidavits of those holding such 75 per cent of the capital stock, showing their qualifications under the law. Applications by corporations must be signed by the president and secretary and attested by the corporate seal. All applications may be upon Form 4-367, modified to suit conditions.

PENDING ENTRIES.

Claims embraced in unpatented entries, if the entryman shall so elect, may be consolidated into a single entry under this act, upon presentation of a proper application therefor, within twelve months from date hereof. In the event of such consolidation, no further payment, publication of notice, nor any new or additional survey of the claims embraced in the consolidated entry will be required; but the application must be accompanied by a plat of the claims as consolidated, by proof of the qualifications of the applicants, and by evidence of the assignment of the claims to the applicants.

ASSIGNMENTS.

Assignments to individuals or corporations under the provisions of the Act of May 28, 1908, must be executed in accordance with local requirements, and all applications be accompanied by abstracts of title properly certified.

SURVEYS.

Where locations already surveyed are sought to be consolidated,

the application must be accompanied by a plat showing the separate locations included in the consolidation and their relation to each other. One entry may then be made for the consolidated claim. Where unsurveyed claims are consolidated, the survey may describe the exterior limits of the consolidated claim, as in the case of the survey of one location, but the field notes of survey must be accompanied by duly certified copies of the location notices of the included claims, and must show that the survey is made substantially in accordance with the aggregate locations. Consolidated claims need not be surveyed in perfect squares or parallelograms, but the length of the consolidated claim must not exceed twice the width, length and width to be measured in straight lines.

TIME WITHIN WHICH APPLICATION TO ENTER MUST BE MADE.

Application for patent for consolidated claims may be accepted if filed within three years from date of the latest recorded notice of location of the included claims, exclusive of the period of suspension between November 12, 1906, and August 1, 1907 (Circular, May 16, 1907, 35 L. D., 572). In case of consolidation of claims, including both claims for which no application for patent has been filed and claims for which applications have been made, the application under the provision of this Act must be filed within three years from date of the latest recorded notice of location of the included claims, exclusive of the period of suspension hereinbefore mentioned. In case of consolidation of claims for all of which applications for patent have already been filed, final proof, payment, and entry must be made within six months after the expiration of the period of six months prescribed by section 3 of the Act of April 28, 1904, for the filing of adverse claims has elapsed in case of all the included applications or within six months after the final adjudication of the rights of the parties in adverse suits instituted with respect to any or all of such included applications: Provided that in those cases wherein the time here specified has expired applications to consolidate must be filed within six months from date hereof.

SECTION 3 OF ACT.

Inasmuch as section 3 deals exclusively with such coal lands or deposits as shall have been purchased under this Act, its interpretation seems more properly to fall within the province of the Department of Justice, and it is deemed inadvisable for this Department to attempt at this time to define its provisions.

ACT APRIL 28, 1904, 33 STATS., 525.

So far as not in conflict with or superseded by the Act of May 28, 1908, the Act of April 28, 1904, will govern the survey, application, and entry of the coal claims described in these instructions.

PATENTS.

Patents issued under the provisions of the Act of May 28, 1908, will contain recitals of the terms and conditions imposed by sections 2 and 3 of the Act.

Very respectfully,

S. V. Proudfit,  
Acting Commissioner.

Approved:

Frank Pierce,  
First Assistant Secretary.



[Public—No. 151.]  
(S. 6805.)

**An Act to Encourage the Development of Coal Deposits in the Territory of Alaska.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal land in the Territory of Alaska in their own interest, prior to November twelfth, nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their said claims or locations by including in a single claim, location, or purchase not to exceed two thousand five hundred and sixty acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated, and for this purpose such persons, their heirs, or assigns, may form associations or corporations who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made: Provided, That no corporation shall be permitted to consolidate its claims under this Act unless seventy-five per centum of its stock shall be held by persons qualified to enter coal lands in Alaska.

Sec. 2. That the United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this Act as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the Court of Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

Sec. 3. That if any of the lands or deposits purchased under the provisions of this Act shall be owned, leased, trusteeed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever so that they form part of, or in any way effect any combination, or are in anywise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, association, corporation, mortgage, stock ownership, or control, in excess of two thousand five hundred and sixty acres in the district of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney-General of the United States in the Courts for that purpose.

Sec. 4. That every patent issued under this Act shall expressly recite the terms and conditions prescribed in sections two and three hereof.

Approved, May 28, 1908.

**INSTRUCTIONS RELATING TO COAL LANDS, ETC.**

Department of the Interior,  
General Land Office,  
Washington, D. C., April 24, 1907.

Registers and Receivers,  
United States Land Offices.

Sirs: The following instructions are issued for your guidance:

**COAL LANDS.**

1. Lands heretofore withdrawn from coal entry and not released from such withdrawals shall be entered on the tract books as "coal lands."

2. No entries of lands so noted shall be permitted under the coal-land laws until the maps and lists, as hereinafter mentioned, are filed in the local land office. Provided, however, such lands are now open for location and entry under the general mining laws for valuable deposits of gold, silver, or copper, notwithstanding the fact

that they may also contain workable deposits of coal. Lands noted on the tract books as coal lands may, if nonmineral in character, be entered under the appropriate land laws, but no final proof or entry will be allowed until receipt of a report from a field officer, in accordance with instructions from the Commissioner of the General Land Office, unless said lands have been restored to entry as hereinafter provided.

3. You will be furnished, from time to time, township maps showing the coal lands in the respective townships, containing thereon the price at which such coal lands will be sold. Lands not enumerated and priced as "coal lands" in any such township map shall be treated as restored to entry under the general land laws, and you will so note on your tract books. Upon the filing of such maps, coal claims may be received, as provided by the regulations of April 12, 1907, within the townships covered thereby.

All coal filings made within sixty days prior to withdrawals from coal entry may be completed within the time prescribed by the statutes, less the time from date of such withdrawals to date of special written notice of filing of the maps and lists in the local office, as herein provided, such notice to be given by you to all persons entitled thereto. Also persons who had, within sixty days prior to such withdrawal, opened and improved a coal mine upon public surveyed lands may file within the statutory period allowed, less that covered by the withdrawal. Claims upon unsurveyed lands classed as coal lands must be presented for filing within sixty days after the filing of the plat of survey, if the maps and plats are filed before the survey, or, after the lands have been surveyed, within sixty days after the filing of the maps and lists herein required in the local office, if the maps and lists are filed after the survey. However, in cases of valid and existent rights, the price per acre to be paid will be the minimum price fixed by statute.

#### LANDS NOT "COAL LANDS."

4. Lands not listed as "coal lands," as hereinbefore mentioned, may be entered under any of the public land laws applicable to the particular tract. If any of these lands are found to contain workable deposits of coal they may be entered under the provisions of the coal land circular of April 12, 1907, at the minimum price fixed by the statute.

#### ACTION REQUIRED BY SPECIAL AGENTS.

5. In all cases of application to make final proof, final entry, or to purchase public lands under any public land law, the Register and Receiver will at once forward a copy thereof to the Chief of Field Division of Special Agents. Such copy will be indorsed "coal lands" or "not coal lands," as the case may be. Where the land is in a National Forest or other reservation, a second copy will be forwarded to the officer in charge thereof.

6. Registers and Receivers will not issue final certificate or its equivalent in any case until the copy of notice mentioned in paragraph 5 is returned with the Chief of Field Division's indorsement thereon. The Chief of Field Division will in every case return the copy of notice prior to date for final proof or purchase.

7. When the copy of notice is returned with an indorsement not protesting the validity of the entry, the Register and Receiver will



act upon the merits of the proof as submitted. Where the returned indorsement of Chief of Field Division or other officer protests the validity of the entry, the Register and Receiver will forward all papers to this office without action.

8. The Chief of Field Division, on receipt of such copy of notice, will make a case thereof on his docket, and also make a field examination in the following cases:

(a) Cases wherein he has reason to believe a particular entry is fraudulent.

(b) Cases wherein the Register and Receiver have reason to believe a particular entry is fraudulent and have indorsed that fact upon the copy of notice.

(c) Cases other than coal entries in lands classed as coal lands.

Chiefs of Field Division will exert every effort to make the field examination prior to date for final proof.

9. In cases not within paragraph 8 the Chief of Field Division will return such copy of notice indorsed over his signature "no protest against validity of this entry." In cases under paragraph 8 he will return to the Register and Receiver the copy of notice indorsed "protest against the validity of this entry is filed in this office." If investigation is completed before date for final proof, he will so notify the Register and Receiver, by letter; and if investigation is unfavorable to entry, he will submit his report to this office.

The circulars of January 21, 1907, March 15, 1907, and all parts of the circular of December 7, 1905, in conflict herewith, and all other regulations and circulars in conflict herewith, are hereby revoked.

Very respectfully,

R. A. Ballinger,  
Commissioner.

Approved April 24, 1907.

James Rudolph Garfield,  
Secretary.

Department of the Interior,  
General Land Office,  
Washington, D. C., May 16, 1907.

Register and Receiver, Juneau, Alaska.

Gentlemen: The following instructions are issued for your guidance:

1. Under the order of November 12, 1906, withdrawing lands in Alaska from entry, location, or filing under the coal-land laws, and subsequent modifications of said order, no lands in Alaska known to contain workable deposits of coal can be entered, located, or filed upon while such orders remain in force, except as hereinafter provided.

2. All qualified persons or associations of qualified persons who had within one year prior to November 12, 1906, in good faith made legal and valid locations under the Act of April 28, 1904, may file notices of such locations in the manner and within the time prescribed by said Act, if such notices have not already been filed and such locations have not been abandoned or forfeited; and they or any other person or persons to whom they may lawfully assign their rights after such notices have been filed may thereafter proceed to make entry and obtain patent within the time and in the manner prescribed by law.

3. In computing the time within which notices of location may be filed under the preceding paragraph, the time intervening between November 12, 1906, and August 1, 1907, will not be taken into consideration or counted, but such notices may be filed within one year from the date of location, exclusive of such time.

4. All qualified persons or associations of qualified persons who may have in good faith legally filed valid notices of location under the Act of April 28, 1904, prior to November 12, 1906, and the bona fide qualified assignees of such

persons, may make entry and obtain patent under such notices within the time and in the manner prescribed by statute if they have not abandoned their right to do so.

5. In computing the time within which persons or associations of persons mentioned in the preceding paragraph may apply for patent, the time intervening between November 12, 1906, and the day on which they receive the written notices given by you as hereinafter required will not be considered or counted, and such applications may be made at any time within three years from the date on which such notices of location were filed, exclusive of such time.

6. You are directed to at once notify all persons or associations of persons who have filed notices of location in your office, including those who have pending applications for patent, and all persons or associations of persons holding as assignees under such locations who have notified you of such assignments, of their right to proceed in the manner herein prescribed and authorized, and to furnish them with a copy of these instructions. These notices must be served either personally or by registered mail, and you should carefully preserve with the record in each case the registry return receipt or other evidence of such notice.

7. In all cases where you publish notice of applications for entry or patent under the coal-land laws, or under any other law, you will at once mail a copy of said notice to a special agent assigned to duty in Alaska. Should said agent thereafter file in your office a protest against the validity of the location or claim embraced in any such application you will defer action upon such application until said protest is withdrawn or appropriate action is taken thereon.

Very respectfully,

R. A. Ballinger,  
Commissioner.

Approved, May 16, 1907.

James Rudolph Garfield,  
Secretary.

#### INSTRUCTIONS.

Department of the Interior,  
General Land Office,  
Washington, D. C., May 20, 1907.

Registers and Receivers, United States Land Office.

Sirs: The following instructions are issued for your further guidance in cases arising under the coal-land laws:

1. As soon as the maps showing the character of any part of any township or townships within your respective districts have been furnished you as prescribed in the coal-land regulations, approved April 12, 1907, you will at once post in your office a list of such townships, and furnish a copy of such list to the newspapers in your district for publication as a matter of news, but without cost to the Government for such publication.

2. You are also directed to mail a copy of these instructions and a copy of the instructions of April 24, 1907, to all persons or associations of persons shown by your records to have or claim any interest in any land covered by any pending application to purchase under the coal-land laws or embraced in any valid unexpired coal declaratory statement.

3. All qualified persons or associations of qualified persons who legally and in good faith went into possession of and improved coal mines within less than sixty days preceding the date when the lands upon which such mines are situated were withdrawn from coal entry, and who have not filed declaratory statements, may at once, or within the time prescribed by statute, namely, within sixty days after the date of actual possession, and the commencement of improvements on the land, not counting the time intervening between date of withdrawal and July 1, 1907, file such declaratory statements and proceed to obtain patent in the manner, at the minimum price, and within the time fixed by law, regardless of the fact that the maps required by the coal-land regulations of April 12, 1907, may not have been filed in your office, and regardless of the fact that a higher price may have been fixed for such lands under said regulations.

4. All qualified persons or associations of qualified persons who in good faith filed legal declaratory statements in your office prior to the date on which the lands covered thereby were withdrawn from coal entry, and all qualified



persons legally holding as assignees under any such declaratory statement by assignment made prior to April 12, 1907, may proceed to obtain title in the manner, at the minimum price, and within the time fixed by the statute, namely, fourteen months after the date of actual possession and the commencement of improvements on the land, not counting the period intervening between date of withdrawal and the mailing of copies of regulations as prescribed by paragraph 2 hereof, regardless of the fact that the maps required by the coal-land regulations of April 12, 1907, may not have been filed in your office at the date upon which application to purchase is presented, and regardless of the fact that a higher price may have been fixed for the lands claimed under said regulations.

All parts of regulations in conflict herewith are hereby revoked.

Very respectfully,

R. A. Ballinger,  
Commissioner.

**COAL LANDS—SURFACE RIGHTS OF ENTRYMEN—ACT OF  
MARCH 3, 1909.**

[Circular.]

Department of the Interior,  
General Land Office,  
Washington, D. C., September 7, 1909.

Registers and Receivers, United States Land Offices.

Gentlemen: The circular approved March 25, 1909 (37 L. D., 528), of instructions, under the act of Congress of March 3, 1909 (35 Stat., 844), for the protection of surface rights of entrymen, is amended to read as follows:

**The Purpose of the Act.**

1. The main purpose of the act is to protect persons who, in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed or reported as being valuable for coal by providing a means whereby such persons may, at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein. It applies alike to locations, selections, and entries made prior to its passage and those made subsequently thereto.

The act also provides for the disposal, under the existing coal-land laws, of the coal contained in such lands.

**Election.**

2. All persons who, in good faith, locate, select, or enter, under the non-mineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the Act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as hereinafter indicated.

**Lands Classified, Claimed, or Reported as Coal Lands.**

3. Upon receipt of these instructions, Registers and Receivers will promptly advise, by registered mail, each nonmineral claimant to land, which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof that he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the Act.

In the event of election to receive such patent, no further inquiry will be necessary respecting the coal character of the land.

In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation unless at the time of hearing on final proof it shall be shown that the land is chiefly valuable for coal.

The claimant may, after determination at final proof that the lands

are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

#### **Notice to Chief of Field Division.**

4. Where the nonmineral claimant indicates his intention to contest the alleged coal character of the land involved, the chief of the appropriate field division must be advised sufficiently to enable him to be prepared to represent the Government at the time such final proof is made.

#### **Action of the Register and Receiver.**

5. In every case where there is controversy as to the coal character of the land, and evidence is offered thereon, the Register and Receiver will forward the testimony and other papers to the Commissioner of the General Land Office, with appropriate recommendation, notice of which should be given the claimant.

#### **Where Final Proof Has Already Been Submitted.**

6. Where satisfactory final proof has heretofore been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, and that the claimant knew that fact at the time of making final proof, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

#### **Disposal of the Coal Deposits.**

7. Where election to accept patent with the prescribed reservation has been made by the nonmineral claimant, coal deposits in the land may be prospected for, mined, and removed under the existing coal-land laws, provided the person desiring to do so first procures the consent of the surface owner, or furnishes such security for payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction. But no coal declaratory statement or application to purchase under sections 2347-2352 of the Revised Statutes, and the regulations of this Office, will be received until the nonmineral claimant, upon the making of satisfactory proof, has elected to take a patent containing the prescribed reservation, and not then unless such coal declaratory statement or application to purchase is accompanied by the consent of the surface owner, or evidence showing that security has been given as prescribed by the act.

Appeals shall be allowed in all proceedings brought hereunder as in other cases.

#### **Certificates and Patents.**

8. Coal declaratory statements, certificates, and patents issued under the provisions of this act will describe the land by legal subdivisions as under the general coal-land laws, and payment will be made at the price fixed for the whole area, but appropriate conditions and limitations will be incorporated in the patent fully defining the interests and rights of the respective parties. To this end you will note on each coal receipt and certificate issued by you, in pursuance thereof, the words "Patent will contain conditions and limitations of the Act of March 3, 1909 (35 Stat., 844)."

Very Respectfully,

S. V. Prouty, Acting Commissioner.

Approved: R. A. Ballinger, Secretary.

[Form Approved by the First Assistant Secretary, September 20, 1909, Department of the Interior.]

4-357.

**Notice of Right of Election in Cases Where Final Proof Has Not Been Submitted.**

(Act March 3, 1909.)



U. S. Land Office, \_\_\_\_\_

No. \_\_\_\_\_

\_\_\_\_\_, 19\_\_\_\_.

Sir: Your attention is directed to the provisions of the Act of March 3, 1909, printed on the back hereof, and you are hereby notified that subsequently to your \_\_\_\_\_ (insert kind of entry, location, or selection) No. \_\_\_\_\_, made \_\_\_\_\_, 19\_\_\_\_, for \_\_\_\_\_, section \_\_\_\_\_, township \_\_\_\_\_, range \_\_\_\_\_, meridian, said tract was classified, claimed, or reported as being valuable for coal; also that at the time of applying for notice to submit final proof you must state in writing whether you elect to receive a patent which shall contain a reservation to the United States of all coal in said land, the right of the United States, or any person or persons authorized by it, to prospect for, mine, and remove coal from the same, in accordance with the conditions and limitations imposed by said Act. Should you elect to receive such patent, no further inquiry will be made respecting the coal character of the land, and patent will issue, with the statutory reservation, provided satisfactory proof of your good faith and of compliance on your part with provisions of the law under which your claim be submitted. In the event you decline to elect to receive such patent, evidence will be received at the time of making final proof with a view to determining whether the land is chiefly valuable for coal, and, the proof being in other respects regular and satisfactory, you will be entitled to receive patent without reservation unless at the time of the hearing on final proof it shall be shown that the land is chiefly valuable for coal.

Respectfully,

.....Register.  
.....Receiver.

**Election to Receive Patent Upon Nonmineral Claim Exclusive of Any Deposits of Coal in the Land.**

State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

I, \_\_\_\_\_, of town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, who on \_\_\_\_\_, 19\_\_\_\_, made location, selection or entry No. \_\_\_\_\_, for the \_\_\_\_\_, Section \_\_, Township \_\_, Range \_\_, \_\_\_\_\_ Meridian, being duly sworn, do hereby elect, upon submission of satisfactory proof of compliance with law under which my claim was initiated, to receive patent for the lands, which patent shall reserve to the United States all of the coal in said lands, with the right of the United States, or any person authorized by it, to prospect for mine, and remove the coal from same in accordance with the conditions and limitations of the Act of March 3, 1909 (35 Stat., 844).

In accordance with above election, I hereby authorize the proper officer or officers of the United States, upon submission of satisfactory final proof upon my location, selection, or entry, to issue final certificate or other paper as basis for patent, containing the reservation of the coal hereintofore described, and to issue patent in accordance therewith.

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by \_\_\_\_\_); and that said affidavit was duly subscribed and sworn to before me at my office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(Official designation of office)

Note 1.—This affidavit of election may be executed before any officer authorized to administer oaths and possessed of a seal.

Note 2.—The attention of parties in interest is directed to the provisions of the Act of March 3, 1909, copy of which is printed below.

(For Act approved March 3, 1909, 35 Stat., 844, see page 444.)

**EXTENSION OF TIME.**

An Act of January 28, 1910, extending time in which to establish residence. Session Laws 1909-1910.

An Act extending the time for certain homesteaders to establish residence upon their lands. North Dakota, South Dakota, Idaho, Minnesota, Montana, Nebraska, Colorado and Wyoming, and the Territory of New Mexico.

Approved, January 28, 1910.

Sixty-first Congress, 1909-1910. Page. 189.

An Act extending the time in which to file adverse claims and institute adverse suits against mineral entries in the district of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the district of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days period of publication, or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office.

Approved, June 7, 1910. Public No. 198.

An Act for the relief of homestead settlers under the Acts of February twentieth, nineteen hundred and four; June fifth and twenty-eighth, nineteen hundred and six; March second, nineteen hundred and seven; and May twenty-eighth, nineteen hundred and eight.

Approved, March 26, 1910.

Homestead. Second Session of Sixty-first Congress, 1909-1910. Page 265.

## **INSTRUCTIONS UNDER ENLARGED HOMESTEAD ACT OF FEBRUARY 19, 1909.**

Department of the Interior,

General Land Office,

Washington, D. C., December 14, 1909.

The Registers and Receivers, United States Land Offices, Colorado, Montana, Nevada, Oregon, Utah, Washington, Wyoming, Arizona, and New Mexico.

Gentlemen: The following instructions are issued for your guidance in the administration of the Act of Congress, approved February 19, 1909, "to provide for an enlarged homestead" (35 Stat., 639), copy of which may be found at the end of these instructions:

### **Homestead Entries for 320 Acres—Kind of Land Subject to Such Entry.**

1. The first section of the Act provides for the making of homestead entry for an area of 320 acres, or less, of nonmineral, non-timbered, nonirrigable public land in the States of Colorado, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and in the Territories of Arizona and New Mexico.

The term "nonirrigable land," as used in this Act, is construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore, lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply, may not be entered under this Act. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under this Act, provided, however, that no one entry shall embrace in the aggregate more than 40 acres of such irrigable lands.

### **Designation or Classification of Lands—Applications to Enter.**

2. From time to time lists designating the lands which are sub-



ject to entry under this Act will be sent you, and immediately upon receipt of such lists you will note upon the tract books opposite the tracts so designated, "Designated, Act February 19, 1909." Until such lists have been received in your office, no applications to enter should be received and no entries allowed under this Act, but after the receipt of such lists it will be competent for you to dispose of applications for lands embraced therein under the provisions of this act, in like manner as other applications for public lands, without first submitting them to the General Land Office for consideration.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands. Each entryman must furnish the affidavit required by section 2 of the Act, and should it afterwards develop that the land is not of the character contemplated by the above Act, the entry must be canceled or the area reduced, as the circumstances may warrant.

### **Compactness—Fees.**

3. Lands entered under this Act must be in a reasonably compact form, and in no event exceed  $1\frac{1}{2}$  miles in length.

The Act provides that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of \$10, required under the general homestead law, the commissions will be determined by the area of land embraced in the entry.

### **Form of Application.**

4. Applications to enter must be submitted upon affidavit, Form No. 4-003, copy of which is annexed hereto.\*

The affidavit of applicant as to the character of the lands must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

### **Additional Entries.**

5. Section 3 of the Act provides that any homestead entryman of lands of the character described in the first section of the Act, upon which entry final proof has not been made, may enter such other lands, subject to the provisions of this Act, contiguous to the former entry, which shall not, together with the lands embraced in the original entry, exceed 320 acres, and that residence upon and cultivation of the original entry shall be accepted as equivalent to residence upon and cultivation of the additional entry.

This section contemplates that lands may, subsequent to entry, be classified or designated by the Secretary of the Interior as falling within the provisions of this Act, and in such cases an entryman of such lands who had not at the time of the classification or designation of the lands made final proof may make such additional entry, provided he is otherwise qualified. Applicants for such additional entries must, of course, tender the proper fees and commissions and must make application and affidavit on the Form No. 4-004, attached hereto. Entryman who made final proof on the original entries prior to the date of the Act or prior to the classification or designation of the lands as coming within the provisions of the act are not entitled to make additional entries under this Act.

\*See page 200 for form.

## **Final Proofs on Original and Additional Entries—Commutation Not Allowed.**

6. Final proofs must be made as in ordinary homestead cases, and in addition to the showing required of ordinary homestead entrymen it must be shown that at least one-eighth of the area embraced in each entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the third year of the entry and continuing to date of final proof.

Final proof submitted on an additional entry must show that the area of such entry required by the Act to be cultivated has been cultivated in accordance with such requirement; or that such part of the original entry as will, with the area cultivated in the additional entry, aggregate the required proportion of the combined entries, has been cultivated in the manner required by the Act.

Proof must be made on the original entry within the statutory period of seven years from the date of the entry; and if it can not be shown at that time that the cultivation has been such as to satisfy the requirements of the Act as to both entries it will be necessary to submit supplemental proof on the additional entry at the proper time. But proof should be made at the same time to cover both entries in all cases where the residence and cultivation are such as to meet the requirements of the Act.

Commutation of either original or additional entry, made under this Act, is expressly forbidden.

### **Right of Entry.**

7. Homestead entries under the provisions of section 2289 of the Revised Statutes, for 160 acres or less, may be made by qualified persons within the States and Territories named upon lands subject to such entry, whether such lands have been designated under the provisions of this Act or not. But those who make entry under the provisions of this Act can not afterwards make homestead entry under the provisions of the general household law\* [nor can an entryman who enters under the general homestead law lands designated as falling within the provisions of this Act afterwards enter any lands under this Act].

A person who has, since August 30, 1890, entered and acquired title to 320 acres of land under the agricultural-land laws (which is construed to mean the timber and stone, desert land, and homestead laws), is not entitled to make entry under this Act; neither is a person who has acquired title to 160 acres under the general homestead law entitled to make another homestead entry under this Act, unless he comes within the provisions of section 3 of the Act providing for additional entries of contiguous lands, or unless entitled to the benefits of section 2 of the Act of June 5, 1900 (31 Stat., 267), or section 2 of the Act of May 22, 1902 (32 Stat., 203).

If, however, a person is a qualified entryman under the homestead laws of the United States, he may be allowed to enter 320

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\*Portion in brackets stricken out by amendment, 40 L. D., 184.



acres under this Act, or such a less amount as when added to the lands previously entered or held by him under the agricultural land laws shall not exceed in the aggregate 480 acres.

Note.—See Circulars Nos. 94 and 99, pages —.

### **Constructive Residence Permitted on Certain Lands in Utah.**

8. The sixth section of the Act under consideration provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of this Act; with the exception, however, that entrymen of such lands will not be required to prove continuous residence thereon. The Act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the Act; and no attempt will be made at this time to determine how far from the land an entryman will be allowed to reside, as it is believed that a proper determination of that question will depend upon the circumstances of each case.

Applications to enter under this section of the Act will not be received until lists designating or classifying the lands subject to entry thereunder have been filed and noted in the local land offices. Such lists will be from time to time furnished the Register and Receivers, who will immediately upon their receipt note upon the tract books opposite the tract so listed the words "Designated, section 6, Act February 19, 1909." Stamps for making the notations required by these instructions will be hereafter furnished the local officers. Applications under this section must be submitted upon Form 4-003, copy of which is annexed hereto.

### **Final Proofs on Entries Allowed Under Section 6—Residence—Commutation Not Allowed.**

9. The final proof under this section must be made as in ordinary homestead entries, except that proof of residence on the land will not be required, in lieu of which the entryman will be required to show that from the date of original entry until the time of making final proof he resided within such distance from said land as enabled him to successfully farm the same. Such proof must also show that not less than one-eighth of the entire area of the land entered was cultivated during the second year; and not less than one-fourth during the fourth and fifth years after entry.

### **Officers Before Whom Application and Proofs May Be Made.**

10. The Act provides that any person applying to enter land under the provisions thereof, shall make and subscribe before the proper officer an affidavit, etc. The term "proper officer," as used herein, is held to mean any officer authorized to take affidavits or proof in homestead cases.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved, December 14, 1909.

R. A. Ballinger,  
Secretary.

[Public—No. 245.]

[S. 6155.]

**An Act to Provide for an Enlarged Homestead.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is a qualified entryman under the homestead laws of the United States may enter, by legal subdivisions, under the provisions of this Act, in the States of Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the Territories of Arizona and New Mexico, three hundred and twenty acres, or less, of non-mineral, nonirrigable, unreserved and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body, and not over one and one-half miles in extreme length: Provided, That no lands shall be subject to entry under the provisions of this Act until such lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation at a reasonable cost from any known source of water supply.

Sec. 2. That any person applying to enter land under the provisions of this Act shall make and subscribe before the proper officer an affidavit as required by section twenty-two hundred and ninety of the Revised Statutes, and in addition thereto shall make affidavit that the land sought to be entered is of the character described in section one of this Act, and shall pay the fees now required to be paid under the homestead laws.

Sec. 3. That any homestead entryman of lands of the character herein described, upon which final proof has not been made, shall have the right to enter public lands, subject to the provisions of this Act, contiguous to his former entry which shall not, together with the original entry, exceed three hundred and twenty acres, and residence upon and cultivation of the original entry shall be deemed as residence upon and cultivation of the additional entry.

Sec. 4. That at the time of making final proofs as provided in section twenty-two hundred and ninety-one of the Revised Statutes the entryman under this Act shall, in addition to the proofs and affidavits required under the said section, prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops other than native grasses beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

Sec. 5. That nothing herein contained shall be held to affect the right of a qualified entryman to make homestead entry in the States named in section one of this Act under the provisions of section twenty-two hundred and eighty-nine of the Revised Statutes, but no person who has made entry under this Act shall be entitled to make homestead entry under the provisions of said section, and no entry made under this Act shall be commuted.

Sec. 6. That whenever the Secretary of the Interior shall find that any tracts of land, in the State of Utah, subject to entry under this Act, do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible, he may, in his discretion, designate such tracts of land, not to exceed in the aggregate two million acres, and thereafter they shall be subject to entry under this Act without the necessity of residence: Provided, That in such event the entryman on any such entry shall in good faith cultivate not less than one-eighth of the entire area of the entry during the second year, one-fourth during the third year, and one-half during the fourth and fifth years after the date of such entry, and that after entry and until final proof the entryman shall reside within such distance of said land as will enable him successfully to farm the same as required by this section.

Approved, February 19, 1909. (35 Stat., 639.)

4-003.

[Form approved by the Secretary of the Interior March 25, 1909.]

**DEPARTMENT OF THE INTERIOR—HOMESTEAD ENTRY.**

[Act February 19, 1909.]

U. S. Land Office, .....

No. ....

**APPLICATION AND AFFIDAVIT.**

I, ..... (give full Christian name) ..... (male or female), a resident of ..... (town, county, and State), do hereby apply to enter, under the Act of February 19, 1909 (35 Stat., 639), the ..... sec-



tion ....., township ....., range ....., ..... meridian, containing ..... acres, within the ..... land district; and I do solemnly swear that I am not the proprietor of more than 160 acres of land in any State or Territory; that I, ..... (applicant must state whether native born, naturalized, or has filed declaration of intention to become a citizen. If not native born, certified copy of naturalization or declaration of intention, as case may be, must be filed with this application), ....., citizen of the United States, and am ..... (state whether the head of a family, married or unmarried, or over twenty-one years of age, and if not over twenty-one applicant must set forth the facts which constitute him the head of a family); that my post-office address is .....; that this application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making this entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract, in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I may acquire from the Government of the United States will inure in whole or in part to the benefit of any person except myself. I have not heretofore made any entry under the homestead, timber and stone, desert land, or pre-emption laws except ..... (here describe former entry or entries by section, township, range, land district, and number of entry, how perfected, or if not perfected state that fact); that I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined same; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian; that the lands applied for do not contain merchantable timber, and no timber except ..... (here fully describe amount and kind of timber, if any), and that it is not susceptible of successful irrigation at a reasonable cost from any known source of water supply, except the following areas: ..... (give the subdivisions and areas of the land, if any, susceptible of irrigation).

.....  
(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known, or has been satisfactorily identified before me by ..... (give full name and post-office address); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ..... (town), ..... (county and State), within the ..... land district, this .... day of ....., 19..

.....  
(Official designation of officer.)

We, ....., of ....., and ....., of ....., do solemnly swear that we are well acquainted with the above-named affiant and the lands described, and personally know that the statements made by him relative to the character of the said lands are true.

.....  
I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me

personally known (or have been satisfactorily identified before me by .....  
 ....); and that said affidavit was duly subscribed to before me at .....,  
 this .... day of ....., 19..

.....  
 (Official designation of officer.)

Note.—In cases where the witnesses are not acquainted with the applicant,  
 the following affidavit may be substituted for the one herein contained.

We, ....., of ....., and ....., of ....., do solemnly swear  
 that we are well acquainted with the lands described in the above application,  
 and personally know that the statements made by the applicant relative to the  
 character of the said lands are true.

(37 L. D., 708.)

United States Land Office at....

....., 19....

I hereby certify that the foregoing application is for surveyed land of  
 the class which the applicant is legally entitled to enter under the Act of  
 February 19, 1909, and that there is no prior valid adverse right to the same;  
 and has this day been allowed.

.....  
 Register.

#### REVISED STATUTES OF THE UNITED STATES—TITLE LXX.—CHAP 4.

Sec. 5392. Every person who, having taken an oath before a competent  
 tribunal, officer, or other person, in any case in which a law of the United  
 States authorizes an oath to be administered, that he will testify, declare,  
 depose, or certify truly, or that any written testimony, declaration, deposition,  
 or certificate by him subscribed is true, willfully and contrary to such oath  
 states or subscribes any material matter which he does not believe to be true,  
 is guilty of perjury, and shall be punished by fine of not more than two  
 thousand dollars, and by imprisonment, at hard labor, not more than five  
 years; and shall, moreover, thereafter be incapable of giving testimony in  
 any court of the United States until such time as the judgment against him  
 is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly  
 or willfully in anywise procures the making or presentation of any false or  
 fraudulent affidavit pertaining to any matter within the jurisdiction of the  
 Secretary of the Interior may be punished by fine or imprisonment.

4-004.

[Form approved by the Secretary of the Interior, March 25, 1909.]

#### DEPARTMENT OF THE INTERIOR.

#### APPLICATION AND AFFIDAVIT.

#### ADDITIONAL HOMESTEAD.

[Act of February 19, 1909.]

Application No..... Land Office at.....

I, ....., of..... do hereby apply to enter under  
 section 3 of the Act of February 19, 1909 (35 Stat., 639), the.....of  
 section ....., township ....., range .....meridian,  
 containing .....acres, as additional to my homestead entry No.....  
 made ..... at ..... Land Office for the .....  
 section ....., township ....., range .....meridian.

I do solemnly swear that I am not the owner of more than one hundred  
 and sixty acres in any State or Territory, exclusive of the land included in  
 my original entry above described, and that this application is made for my  
 exclusive benefit as an addition to my original homestead entry, and not directly  
 or indirectly for the use or benefit of any other person or persons whomsoever;  
 that this application is honestly and in good faith made for the purpose  
 of actual settlement and cultivation; that I will faithfully and honestly  
 endeavor to comply with all the requirements of law; and that I have not  
 heretofore made an entry under the homestead, timber and stone, desert land,  
 or preemption laws other than that above described, except.....  
 (here describe former entries, if any); that I am well acquainted with the  
 character of the land herein applied for and each and every legal subdivision  
 thereof, having passed over the same; that my personal knowledge of the



land is such as to enable me to testify understandingly with regard thereto; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal, cement, gravel, or other valuable mineral deposit; that the land contains no salt springs or deposits of salt in any form sufficient to render it valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of the land is worked for minerals during any part of the year by any person or persons, and that my application is not made for the purpose of fraudulently obtaining title to mineral lands; that the land is not occupied and improved by any Indian, and is unoccupied and unappropriated by any person claiming the same under the public land laws other than myself; that the land embraced in the original entry and the land now applied for do not contain merchantable timber, and no timber except.....(here fully describe amount and kind of timber, if any), and that it is not susceptible of successful irrigation at a reasonable cost from any known source of water supply, except the following areas: ..... (Give the subdivisions and areas of the lands, if any, susceptible of irrigation.

.....  
(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See sec. 5392, R. S., below.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed his signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by ..... [give full name and post-office address]); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ..... (town), ..... (county and State), within the ..... land district, this ..... day of ..... 19....

.....  
(Official designation of officer.)

We, .... of ...., and ...., of ...., do solemnly swear that we are well acquainted with the above-named affiant and the lands described, and personally know that the statements made by him relative to the character of the said lands are true.

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by .....); and that said affidavit was duly subscribed to before me at ....., this ..... day of ....., 19.....

.....  
(Official designation of officer.)

United States Land Office at .....

....., 19....

I hereby certify that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter under the Act of February 19, 1909, and that there is no prior valid adverse right to the same; and has this day been allowed.

.....  
Register.

# REVISED STATUTES OF THE UNITED STATES—TITLE LXX, CRIMES, CHAP. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully, and contrary to such oath states or subscribes to any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two

thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[Circular No. 99.]

## **ENLARGED HOMESTEADS—SETTLEMENT RIGHTS—ADDITIONAL ENTRIES—INSTRUCTIONS.**

Department of the Interior,  
General Land Office,  
Washington, D. C., April 16, 1912.

Registers and Receivers, United States Land Offices, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Gentlemen: The following instructions are issued for your guidance in the administration of the Act of Congress approved February 19, 1909, "to provide for an enlarged homestead" (35 Stat., 639), and are supplemental to, and in modification of, the instructions contained in Circular No. 10, Suggestions to Homesteaders, approved April 20, 1911, pages 17 to 21, inclusive.

An entryman under section 2289, Revised Statutes, who makes an additional entry under section 3 of the enlarged Homestead Act, may continue both residence and cultivation upon the original entry, but final proof may not be made for the land embraced in the additional entry until full compliance with the requirements of said Act has been effected beginning with the date of such additional entry. Final proof must be made on the original entry within the statutory period of seven years.

The cultivation required in such cases is an amount equal to one-eighth and one-fourth of the area embraced in the additional entry, commencing with the second and third years, respectively, of such additional entry. If such proportionate area, or any part thereof, is of land embraced in the original unperfected entry, there must be such additional cultivation of the original entry as would ordinarily be required to perfect the title thereto if it stood alone.

Prior to the designation of land as subject to entry under the Enlarged Homestead Act, a settlement right may be acquired to not more than approximately 160 acres of unsurveyed land, and should such settlement claim be extended, after all the land involved has been designated as subject to entry under the Act, to embrace additional land with a view to entry under the said Act, title may be acquired to the enlarged area only by continued residence, and cultivation as required by section 4 of the Act, for the full period after the date of designation and extension of settlement.

All former instructions not in harmony with the foregoing are vacated, and superseded hereby, and you will mail a copy of this circular to every person having an unperfected entry under the Enlarged Homestead Act in your district. You will also inclose it with each "Suggestions to Homesteaders" which you may hereafter send out in response to inquiries under the homestead laws.

These instructions apply also to the Act of June 17, 1910 (36



Stat., 531), providing for an enlarged homestead in the State of Idaho.

Very respectfully,

Approved:

Samuel Adams,

First Assistant Secretary.

Fred Dennett,

Commissioner.

[Circular No. 94.]

**ENLARGED HOMESTEADS—ACT OF FEBRUARY 19, 1909 (35 STAT., 639), AND JUNE 17, 1910 (36 STAT., 531)—INSTRUCTIONS.**

Department of the Interior,  
General Land Office,  
Washington, D. C., April 2, 1912.

Registers and Receivers, United States Land Offices,  
Arizona, Colorado, Idaho, Montana, Nevada, New  
Mexico, Oregon, Utah, Washington, and Wyoming.

Gentlemen: Under date of March 22, 1912, the following instructions were issued by the Department to this Office:  
The Commissioner of the General Land Office.

Sir: I have your informal memorandum dated March 2, 1912, submitted in connection with a letter prepared in your office for my signature (P. R. S., 1071), addressed to Hon. Charles N. Pray, House of Representatives, the memorandum being in full as follows:

"It is now held by the General Land Office that in cases such as are discussed in the accompanying letter an entry under the enlarged homestead Act for the full area of 320 acres may be allowed when the deficit in area of the former perfected entry, under section 2289, Revised Statutes, was such as would entitle the entryman, under the rule of approximation, to make an additional entry under section 6 of the Act of March 2, 1889 (25 Stat., 854), of a legal subdivision of 40 acres."

Differently stated, reference being had to the aforesaid draft of letter, this is the equivalent of saying that it is now held as a rule of administration in the General Land Office that in cases where a homestead entry has been allowed and perfected, under section 2289 of the Revised Statutes, for a quantity of land less than 160 acres, the entryman of the perfected homestead may make a further or additional entry for 320 acres of land under the enlarged homestead Act of February 19, 1909 (35 Stat., 639), in all cases where such deficiency would entitle him to make an additional entry under section 6 of the Act of March 2, 1889, for 40 acres of land.

That this is an erroneous view of the law seems clear. The enlarged homestead Act permits the entry of 320 acres or less of land by any person "who is a qualified entryman under the homestead laws of the United States." Section 6 of said Act of March 2, 1889, qualified a person who has entered "a quantity of land less than 160 acres," and who is otherwise within its provisions, to enter under the homestead laws "so much additional land as added to the quantity previously so entered by him shall not exceed 160 acres." This does not restore such person to the full qualifications of a homestead entryman, but confers a special and limited privilege—limited to the right to make an additional entry for lands of area to be measured by the difference in acreage between 160 acres, the full homestead right given by section 2289 of the Revised Statutes, and the number of acres actually entered thereunder. In other words, the right granted by the Act of March 2, 1889, is the right to enter additional land in amount limited to meet the deficiency existing between that originally entered under the homestead laws and 160 acres. The rule of approximation for administrative convenience may in actual practice either enlarge or reduce this right, but this does not affect the construction of the statute.

So the right of additional entry given by the Act of March 2, 1889, is necessarily confined by its terms to an acreage wholly inconsistent with the theory that 320 acres may be entered under the enlarged homestead Act. Nothing in the enlarged homestead Act precludes the exercise of such right of additional entry within the area designated for entry under that act, but the grant of additional right is not thereby enlarged as to such cases. It is such right only as might be exercised elsewhere upon the public domain of the United States subject to homestead entry.

This question was presented in a somewhat different form in the case of *ex parte Saavi Storaasli*, decided by this Department July 18, 1911 (40 L. D., 193). That case involved the right of Storaasli to make an entry of 320 acres or to retain an entry of 160 acres of land he had been allowed to make under the enlarged homestead Act. It appeared that he had theretofore made and perfected an entry under section 2289 of the Revised Statutes for 157.33 acres, and he maintained his claim of right to make the enlarged homestead upon the ground that he was in that behalf a qualified entryman by reason of the deficiency of 2.67 acres of his original homestead and consequent additional entry privilege accorded by the Act of March 2, 1889. That claim was denied upon the ground that—

“The fact that the land thus patented lacked a little more than 2 acres of making 160 acres did not give him the status of a qualified homestead entryman or the right to enter under the enlarged homestead Act an additional 320 acres of land.”

It was not intended by this to say, even inferentially, that the case would have been different if the deficiency in the original entry had been large enough under the Act of March 2, 1889, as administered, to entitle him to an additional homestead entry for 40 acres of land. That case was decided upon its own facts. The discussion was confined to such facts, and nothing found therein justifies the rule which you say now obtains in your Office with reference to this question.

I have to direct that in the further administration of the enlarged homestead Act your office conform to the views herein expressed.

Very Respectfully,

Samuel Adams,  
First Assistant Secretary.

The foregoing instructions supersede any former practice or instructions, and you will be governed accordingly.

Very Respectfully

Fred Dennett, Commissioner.

Approved, April 2, 1912.

Samuel Adams,  
First Assistant Secretary.

## **ENLARGED HOMESTEAD IN IDAHO—ACT OF JUNE 17, 1910.**

### **Instructions.**

Department of the Interior,  
General Land Office,  
Washington, D. C., July 18, 1910.

Registers and Receivers, United States Land Offices in Idaho.

Gentlemen: The following instructions are issued for your guidance in the administration of the Act of Congress, approved June 17, 1910 (Public 214), entitled “An Act to provide for an enlarged homestead,” a copy of which may be found at the end of these instructions.

### **Homestead Entries for 320 Acres—Kind of Land Subject to Such Entry.**

1. The first section of the Act provides for the making of homestead entry for an area of 320 acres, or less, of arid, nonmineral, nontimbered, nonirrigable public land in the State of Idaho.

The terms “arid” or “nonirrigable land,” as used in this Act are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as “dry farming,” and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore, lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply, may not be entered under this Act. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under this Act, provided, however, that no one entry shall embrace in the aggregate more than forty acres of such irrigable lands.

### **Designation or Classification of Lands—Applications to Enter.**

2. From time to time lists designating the lands which are subject to entry under this Act will be sent you, and immediately upon receipt of such lists you will note upon the tract books opposite the tracts so designated, “Desig-



nated, Act June 17, 1910." Until such lists have been received in your office, no applications to enter should be received and no entries allowed under this Act, but after the receipt of such lists it will be competent for you to dispose of applications for lands embraced therein under the provisions of this Act, in like manner as other applications for public lands, without first submitting them to the General Land Office for consideration.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above Act, the designation may be canceled, but where an entry is made in good faith under the provisions of said Act, such designation will not thereafter be modified to the injury of any one who, in good faith, has acted upon such designation. Each entryman must furnish affidavit as required by Section 2 of the Act.

#### **Compactness—Fees.**

3. Lands entered under this Act must be in a reasonably compact form, and in no event exceed one and one-half miles in length.

The Act provides that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of \$10, required under the general homestead law, the commissions will be determined by the area of land embraced in the entry.

#### **Form of Application.**

4. Applications to make entry under this Act must conform to the forms prepared for use under the Act of February 19, 1909, 35 Stat., 639 (see circular December 14, 1909, 38 L. D., 361), except that such form must be properly modified as to the date of the Act. Applications to enter must be submitted upon affidavit Form No. 4-005, properly modified.

The affidavit of applicant as to the character of the lands must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

#### **Additional Entries.**

5. Section 3 of the Act provides that any homestead entryman of lands of the character described in the first section of the Act, upon which entry final proof has not been made, may enter such other lands, subject to the provisions of this Act, contiguous to the former entry, which shall not, together with the lands embraced in the original entry, exceed 320 acres, and that residence upon and cultivation of the original entry shall be accepted as equivalent to residence upon and cultivation of the additional entry.

This section contemplates that lands may, subsequent to entry, be classified or designated by the Secretary of the Interior as falling within the provisions of this Act, and in such cases an entryman of such lands who had not at the time of the classification or designation of the lands made final proof, may make such additional entry, provided he is otherwise qualified. Applicants for such additional entries must, of course, tender the proper fees and commissions and must make application and affidavit on the Form No. 4-004, properly modified as to date of the Act. Entryman who made final proof on the original entries prior to the date of the Act or prior to the classification or designation of the lands as coming within the provisions of the Act are not entitled to make additional entries under this Act.

#### **Validation of Entries.**

[Public—No. 328.]

[H. R. 21826.]

**An Act Validating certain homestead entries.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all pending homestead entries made in good faith prior to September first, nineteen hundred and eleven, under the provisions of the enlarged homestead laws, by persons who, before making such enlarged homestead entry, had acquired title to a technical quarter section of

land under the homestead law, and therefore were not qualified to make an enlarged homestead entry, be, and the same are hereby, validated, if in all other respects regular, in all cases where the original homestead entry was for less than one hundred and sixty acres of land.

Approved August 24, 1912.

**Final Proofs on Original and Additional Entries—Commutation Not Allowed.**

6. Final proofs must be made as in ordinary homestead cases, and in addition to the showing required of ordinary homestead entrymen it must be shown that at least one-eighth of the area embraced in each entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the third year of the entry, and continuing to date of final proof.

Final proof submitted on an additional entry must show that the area of such entry required by the Act to be cultivated has been cultivated in accordance with such requirement; or that such part of the original entry as will, with the area cultivated in the additional entry, aggregate the required proportion of the combined entries, has been cultivated in the manner required by the Act.

Proof must be made on the original entry within the statutory period of seven years from the date of the entry; and if it cannot be shown at that time that the cultivation has been such as to satisfy the requirements of the Act as to both entries it will be necessary to submit supplemental proof on the additional entry at the proper time. But proof should be made at the same time to cover both entries in all cases where the residence and cultivation are such as to meet the requirements of the Act.

Commutation of either original or additional entry, made under this Act, is expressly forbidden.

**Right of Entry.**

7. Homestead entries under the provisions of Section 2289 of the Revised Statutes, for 160 acres or less, may be made by qualified persons within the State named upon lands subject to such entry, whether such lands have been designated under the provisions of this Act or not. But those who make entry under the provisions of this Act cannot afterwards make homestead entry under the provisions of the general homestead law, nor can an entryman who enters under the general homestead law lands designated as falling within the provisions of this Act afterwards enter any lands under this Act.

A person who has, since August 30, 1890, entered and acquired title to 320 acres of land under the agricultural-land laws (which is construed to mean the timber and stone, desert land, and homestead laws), is not entitled to make entry under this Act; neither is a person who has acquired title to 160 acres under the general homestead law entitled to make another homestead entry under this Act, unless he comes within the provisions of Section 3 of the Act providing for additional entries of contiguous lands, or unless entitled to the benefits of Section 2 of the Act of June 5, 1900 (31 Stat., 267), or Section 2 of the Act of May 22, 1902 (32 Stat., 203).

If, however, a person is a qualified entryman under the homestead laws of the United States, he may be allowed to enter 320 acres under this Act, or such a less amount as when added to the lands previously entered or held by him under the agricultural-land laws shall not exceed in the aggregate 480 acres.

**Constructive Residence Permitted on Certain Lands.**

8. The sixth section of the Act under consideration provides that not exceeding 320,000 acres of land in the State of Idaho, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of this Act; with the exception, however, that entrymen of such lands will not be required to prove continuous residence thereon. The Act provides in such cases that after six months from date of entry and until final proof, all entrymen must reside not more than twenty miles from the land entered and be engaged personally in preparing the soil for seed, seeding, cultivating and harvesting crops upon the land during the usual seasons for such work, unless prevented by sickness or other unavoidable



able cause. It is further provided by said Act that leave of absence from a residence established under this section may be granted upon the same terms and conditions as are required of other homestead entrymen.

Applications to enter under this section of the Act will not be received until lists designating or classifying the lands subject to entry thereunder have been filed and noted in the local land offices. Such lists will be from time to time furnished the registers and receivers, who will immediately upon the receipt note upon the tract books opposite the tract so listed, the words "Designated, Section 6, Act June 17, 1910." Stamps for making the notations required by these instructions will be hereafter furnished the local offices. Applications under this section must be submitted upon Form 4-003, properly modified as to date and section of the Act.

#### **Final Proofs on Entries Allowed Under Section 6—Residence—Commutation Not Allowed.**

9. The final proof under this section must be made as in ordinary homestead entries, except that proof of residence on the land will not be required, in lieu of which the entryman will be required to show that, from the expiration of six months after the date of original entry and until the time of making final proof, he resided not more than twenty miles from the land entered and was personally engaged in farming the same as required by said Act. Such proof must also show that not less than one-eighth of the entire area of the land entered was cultivated during the second year; not less than one-fourth during the third year; and not less than one-half during the fourth and fifth years.

#### **Officers Before Whom Application and Proofs May Be Made.**

10. The Act provides that any person applying to enter the land under the provisions thereof shall make and subscribe before the proper officer an affidavit, etc. The term "proper officer," as used herein, is held to mean any officer authorized to take affidavits or proof in homestead cases.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:  
Frank Pierce,  
Acting Secretary.

[Public—No. 214.]

#### **An Act to Provide for an Enlarged Homestead.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is a qualified entryman under the homestead laws of the United States, may enter, by legal subdivision, under the provisions of this Act, in the State of Idaho, three hundred and twenty acres or less of arid, nonmineral, nonirrigable, unreserved, and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body and not over one and one-half miles in extreme length: Provided, That no lands shall be subject to entry under the provisions of this Act until the lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation, at a reasonable cost, from any known source of water supply.

Sec. 2. That any person applying to enter land under the provisions of this Act shall make and subscribe before the proper officer an affidavit as required by section twenty-two hundred and ninety of the Revised Statutes, and in addition thereto shall make affidavit that the land sought to be entered is of the character described in section one of this Act, and shall pay the fees now required to be paid under the homestead laws.

Sec. 3. That any homestead entryman of lands of the character herein described, upon which final proof has not been made, shall have the right to enter public lands, subject to the provisions of this Act, contiguous to his former entry, which shall not, together with the original entry, exceed three hundred and twenty acres, and residence upon and cultivation of the original entry shall be deemed as residence upon and cultivation of the additional entry.

Sec. 4. That at the time of making final proofs as provided in section twenty-two hundred and ninety-one of the Revised Statutes, the entryman under this Act shall, in addition to the proofs and affidavits required under

said section, prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops other than native grasses beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

Sec. 5. That nothing herein contained shall be held to affect the right of a qualified entryman to make homestead entry in the State of Idaho under the provisions of section twenty-two hundred and eighty-nine of the Revised Statutes, but no person who has made entry under this Act shall be entitled to make homestead entry, under the provisions of said section, and no entry made under this Act shall be commuted.

Sec. 6. That whenever the Secretary of the Interior shall find that any tracts of land in the State of Idaho subject to entry under this Act do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible, he may, in his discretion, designate such tracts of land, not to exceed in the aggregate three hundred and twenty thousand acres, and thereafter they shall be subject to entry under this Act without the necessity of residence upon the land entered: Provided, That the entryman shall in good faith cultivate not less than one-eighth of the entire of the area during the second year, one-fourth during the third year and one-half during the fourth and fifth years after the date of said entry, and that after six months from date of entry until final proof the entryman shall reside not more than twenty miles from said land and be engaged personally in preparing the soil for seed, seeding, cultivating, and harvesting crops upon the land during the usual seasons for such work unless prevented by sickness or other unavoidable cause. Leave of absence from a residence established under this section may, however, be granted upon the same terms and conditions as are required of other homestead entrymen.

Approved, June 17, 1910.

## LAWS RELATING TO TOWNSITES, PARKS, AND CEMETERIES.

### Subject Index.

1. County-seat townsites, Sec. 2286; see Regulations (12).
- (13). 2. Townsites reserved by President, Secs. 2380, 2381; see Regulations (13).
3. Townsites platted by occupants, Secs. 2382 to 2386; see Regulations (14).
4. Townsites entered by corporate authorities or judges of county courts as trustees, Secs. 2387 to 2394; see Regulations (15).
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7. Townsites on ceded Indian reservations.
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    1. Reservations for parks, schools, etc., and Oklahoma homestead commutations for townsites.
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3. Townsites in Blackfeet and Fort Peck lands.
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  - (k) In California and Arizona; see Regulations (17 k).
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  8. Townsites in Reclamation projects; see Regulations (18).
  9. Aliens may acquire town lots in the Territories.
  10. Parks and cemeteries; see Regulations (19).
  11. Cemeteries; see Regulations (20).
- See index to subject.

## UNITED STATES LAWS RELATING TO TOWNSITES, PARKS, AND CEMETERIES.

Department of the Interior,  
General Land Office,  
Washington, D. C., August 7, 1909.

### (1) County Seat Townsites.

Sec. 2286. There shall be granted to the several counties or parishes of each State and Territory, where there are public lands, at the minimum price for which public lands of the United States are sold, the right of preemption to one quarter section of land, in each of the counties or parishes, in trust for such counties or parishes, respectively, for the establishment of seats of justice therein; but the proceeds of the sale of each of such quarter sections shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same. And the seat of justice for such counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located.

Act approved May 26, 1824 (4 Stat., 50, sec. 1.)

### (2) Townsites Reserved by President.

Sec. 2380. The President is authorized to reserve from the public lands, whether surveyed or unsurveyed, townsites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population.

Sec. 2381. When, in the opinion of the President, the public interests require it, it shall be the duty of the Secretary of the Interior to cause any of such reservations, or part thereof, to be surveyed into urban or suburban lots of suitable size, and to fix by appraisement of disinterested persons their cash value, and to offer the same for sale at public outcry to the highest bidder, and thence afterward to be held subject to sale at private entry according to such regulations as the Secretary of the Interior may prescribe; but no lot shall be disposed of at public sale or private entry for less than the appraised value thereof. And all such sales shall be conducted by the Register and Receiver of the land office in the district in which the reservations may be situated, in accordance with the instructions of the Commissioner of the General Land Office.

Act approved March 3, 1863 (12 Stat., 754.)

### (3) Townsites Platted by Occupants.

Sec. 2382. In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the recorder for the county in which the same is situated, a plat thereof, for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of an organized land district, a similar map and statement shall be filed with the Register and Receiver, and at any time after the filing of such map, statement, and testimony in the General Land Office it may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property. But any actual settler upon any one lot, as above provided, and upon any additional lot in which he may have substantial improvements shall be entitled to prove up and purchase the same as a preemption, at such minimum, at any time before the day fixed for the public sale.

Sec. 2383. When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases.

Sec. 2384. If within twelve months from the establishment of a city or town on the public domain, the parties interested refuse or fail to file in the General Land Office a transcript map, with the statement and testimony called for by the provisions of section twenty-three hundred and eighty-two, it may be lawful for the Secretary of the Interior to cause a survey and plat to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by such provisions, with this exception, that they shall each be at an increase of fifty per centum on the minimum of ten dollars per lot.

Act approved July 1, 1864 (13 Stat., 343, secs. 2, 3, and 4).



Sec. 2385. In the case of any city or town, in which the lots may be variant as to size from the limitation fixed in section twenty-three hundred and eighty-two, and in which the lots and buildings, as municipal improvements, cover an area greater than six hundred and forty acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim under the provisions of that section; but the minimum price of each lot in such city or town, which may contain a greater number of square feet than the maximum named in that section, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish.

Sec. 2386. Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

Act approved March 3, 1865 (13 Stat., 530, sec. 2). (See sec. 2392, Rev. Stats., and sec. 16, Act of March 3, 1891, 26 Stat., 1101, *infra*.)

#### **(4) Townsites Entered by Corporate Authorities or Judges of County Courts as Trustees.**

Sec. 2387. Whenever any portion of the public lands have been or may be settled upon and occupied as a townsite, not subject to entry under the agricultural preemption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated. (35 L. D., 320; 36 L. D., 85.)

Sec. 2388. The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a townsite shall be filed with the Register of the proper land office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States; but in any Territory in which a land office may not have been established, such declaratory statements may be filed with the Surveyor-General of the surveying district in which the lands are situated, who shall transmit the same to the General Land Office.

Sec. 2389. If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands authorized by law; and where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one

thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed. (35 L. D., 559.)

\* \* \* \* \*

Sec. 2391. Any act of the trustees not made in conformity to the regulations alluded to in section twenty-three hundred and eighty-seven shall be void.

Act approved March 2, 1867 (14 Stat., 541). (See similar Act approved May 23, 1844, 5 Stat., 657, repealed by Act approved July 1, 1864, 13 Stat., 344, sec. 5.)

Acts approved June 23, 1874 (18 Stat., 254, sec. 3), and March 3, 1877 (19 Stat., 392).

Sec. 2392. No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnabar, or copper; or to any valid mining-claim or possession held under existing laws.

Act approved March 2, 1867 (14 Stat., 542), and Act approved June 8, 1868 (15 Stat., 67). (See sec. 2386, Rev. Stats., supra, and sec. 16, Act of March 3, 1891, 26 Stat., 1101, infra.)

Sec. 2393. The provisions of this chapter shall not apply to military or other reservations heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the Land Office by title derived from the Crown of Spain, or otherwise.

Act approved March 2, 1867 (14 Stat., 542).

Sec. 2394. The inhabitants of any town located on the public lands may avail themselves, if the town authorities choose to do so, of the provisions of sections twenty-three hundred and eighty-seven, twenty-three hundred and eighty-eight, and twenty-three hundred and eighty-nine; and, in addition to the minimum price of the lands embracing any townsite so entered, there shall be paid by the parties availing themselves of such provisions all costs of surveying and platting any such townsite, and expenses incident thereto incurred by the United States, before any patent issues therefor; but nothing contained in the sections herein cited shall prevent the issuance of patents to persons who have made or may hereafter make entries, and elect to proceed under other laws relative to townsites in this chapter set forth.

Act approved June 8, 1868 (15 Stat., 67).

### (5) Additional Townsites, Etc.

\* \* \* \* \*

That the existence or incorporation of any town upon the public lands of the United States shall not be held to exclude from pre-emption or homestead entry a greater quantity than twenty-five hundred and sixty acres of land, or the maximum area which may be entered as a townsite under existing laws, unless the entire tract claimed or incorporated as such townsite shall, including and in excess of the area above specified, be actually settled upon, inhabited, improved, and used for business and municipal purposes.



Sec. 2. That where entries have been heretofore allowed upon lands afterwards ascertained to have been embraced in the corporate limits of any town, but which entries are or shall be shown, to the satisfaction of the Commissioner of the General Land Office, to include only vacant unoccupied lands of the United States, not settled upon or used for municipal purposes, nor devoted to any public use of such town, said entries, if regular in all respects, are hereby confirmed and may be carried into patent: Provided, That this confirmation shall not operate to restrict the entry of any town-site to a smaller area than the maximum quantity of land which, by reason of present population, it may be entitled to enter under said section twenty-three hundred and eighty-nine of the Revised Statutes.

Sec. 3. That whenever the corporate limits of any town upon the public domain are shown or alleged to include lands in excess of the maximum area specified in section one of this Act, the Commissioner of the General Land Office may require the authorities of such town, and it shall be lawful for them, to elect what portion of said lands, in compact form and embracing the actual site of the municipal occupation and improvement, shall be withheld from pre-emption and homestead entry; and thereafter the residue of such lands shall be open to disposal under the homestead and pre-emption laws. And upon default of said town authorities to make such election within sixty days after notification by the Commissioner, he may direct testimony respecting the actual location and extent of said improvements, to be taken by the Register and Receiver of the district in which such town may be situated; and, upon receipt of the same, he may determine and set off the proper site according to section one of this Act, and declare the remaining lands open to settlement and entry under the homestead and pre-emption laws; and it shall be the duty of the secretary of each of the Territories of the United States to furnish the surveyor-general of the Territory for the use of the United States a copy duly certified of every Act of the legislature of the Territory incorporating any city or town, the same to be forwarded by such secretary to the surveyor-general within one month from date of its approval.

Sec. 4. It shall be lawful for any town which has made, or may hereafter make entry of less than the maximum quantity of land named in section twenty-three hundred and eighty-nine of the Revised Statutes to make such additional entry, or entries, of contiguous tracts, which may be occupied for town purposes as when added to the entry or entries theretofore made will not exceed twenty-five hundred and sixty acres. Provided, That such additional entry shall not together with all prior entries be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in said section twenty-three hundred and eighty-nine.

Act approved March 3, 1877 (19 Stat., 392).

#### (6) Townsites on Mineral Lands.

\* \* \* \* \*

Sec. 16. That townsite entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold,

silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

\* \* \* \* \*

Act approved March 3, 1891 (26 Stat., 1101). (See secs. 2386 and 2392, Rev. Stats., supra.)

## (7) Townsites on Ceded Indian Reservations.

### (a) IN OKLAHOMA.

#### RESERVATIONS FOR PARKS, SCHOOLS, ETC., AND OKLAHOMA HOMESTEAD COMMUTATIONS FOR TOWNSITES.

\* \* \* \* \*

Sec. 22. That the provisions of Title thirty-two, chapter eight of the Revised Statutes of the United States relating to "reservation and sale of townsites on the public lands" shall apply to the lands open, or to be opened to settlement in the Territory of Oklahoma, except those opened to settlement by the proclamation of the President on the twenty-second day of April, eighteen hundred and eighty-nine: Provided, That hereafter all surveys for townsites in said Territory shall contain reservations for parks (of substantially equal area if more than one park) and for schools and other public purposes, embracing in the aggregate not less than ten nor more than twenty acres; and patents for such reservations, to be maintained for such purposes, shall be issued to the towns respectively when organized as municipalities: Provided further, That in case any lands in said Territory of Oklahoma, which may be occupied and filed upon as a homestead, under the provisions of law applicable to said Territory, by a person who is entitled to perfect his title thereto under such laws, are required for townsite purposes, it shall be lawful for such person to apply to the Secretary of the Interior to purchase the lands embraced in said homestead or any part thereof for townsite purposes. He shall file with the application a plat of such proposed townsite, and if such plat shall be approved by the Secretary of the Interior, he shall issue a patent to such person for land embraced in said townsite, upon the payment of the sum of ten dollars per acre for all the lands embraced in such townsite, except the lands to be donated and maintained for public purposes as provided in this section. And the sums so received by the Secretary of the Interior shall be paid over to the proper authorities of the municipalities when organized, to be used by them for school purposes only.

\* \* \* \* \*

Act approved May 2, 1890 (26 Stat., 91, sec. 22).



HOMESTEADS COMMUTED FOR TOWNSITE PURPOSES IN WICHITA,  
COMANCHE, KIOWA, AND APACHE LANDS.

\* \* \* \* \*

That that portion of section twenty-two of the Act approved May second, eighteen hundred and ninety, entitled "An Act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," providing for the commutation for townsite purposes of homestead entries in certain instances, be, and the same is hereby, made applicable to the lands in the Territory of Oklahoma ceded to the United States by the Wichita and affiliated bands of Indians and the Comanche, Kiowa, and Apache tribes of Indians, under agreements, respectively, ratified by the Acts of Congress of March second, eighteen hundred and ninety-five, and June sixth, nineteen hundred.

Act approved March 11, 1902 (32 Stat., 63).

TOWNSITES VACATED IN COMMUTED HOMESTEADS.

\* \* \* That in all cases where a townsite, or an addition to a townsite, entered under the provisions of section twenty-two of an Act entitled "An Act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," approved May second, eighteen hundred and ninety, shall be vacated in accordance with the laws of the Territory of Oklahoma, and patents for the public reservations in such vacated townsite, or addition thereto, have not been issued, it shall be lawful for the Commissioner of the General Land Office, upon an official showing that such townsite, or addition thereto, has been vacated, and upon payment of the homestead price for such reservations, to issue a patent for such reservations to the original entryman.

If the original entryman shall fail or neglect to make application for the reservations within six months from the vacation of such townsite, or from the passage of this Act, the reservations shall be subject to disposal under the provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States, as amended by the Act approved February twenty-sixth, eighteen hundred and ninety-five.

Sec. 2. That if a patent has already issued, or shall hereafter issue, for any such reservation, to any town or municipality, such town or municipality, upon the vacation of the townsite or addition thereto, as aforesaid, may sell the same at public or private sale to the highest bidder after thirty days' public notice of such sale, and convey said lands to the purchaser by proper deed of conveyance, and cover the proceeds of such sale into the school fund of such town or municipality: Provided, That where, by reason of the vacation of an entire townsite and all its additions, the municipal organization has ceased to exist, the reservations in such vacated townsite which may have been patented to the town may be disposed of as isolated tracts under the provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States, as amended by the Act approved February twenty-sixth, eighteen hundred and ninety-five.

Sec. 3. That all laws and parts of laws, in so far as they conflict with this Act, are hereby repealed.

Act approved May 11, 1896 (29 Stat., 116).

### (b) IN MINNESOTA.

#### TOWNSITES IN CEDED INDIAN LANDS.

\* \* \* \* \*

That chapter eight, title thirty-two, of the Revised Statutes of the United States, entitled "Reservation and sale of townsites on the public lands," be, and is hereby, extended to and declared to be applicable to ceded Indian lands within the State of Minnesota. This Act shall take effect and be in force from and after its passage.

Act approved February 9, 1903 (32 Stat., 820).

### (c) IN SOUTH DAKOTA.

#### TOWNSITES IN ROSEBUD INDIAN LANDS IN TRIPP COUNTY.

\* \* \* \* \*

Sec. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation.

\* \* \* \* \*

Sec. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided. \* \* \*

Approved March 2, 1907 (34 Stat., 1230 and 1231). See paragraph 9, proclamation of August 24, 1908 (37 L. D., 122).

### (d) IN NORTH AND SOUTH DAKOTA.

#### TOWNSITES IN CHEYENNE RIVER AND STANDING ROCK LANDS.

\* \* \* \* \*

Sec. 2. That the lands shall be disposed of by proclamation under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation:

\* \* \* \* \*

Sec. 5. That the Secretary of the Interior is authorized to reserve from said lands such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance



with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

\* \* \* \* \*

Approved May 29, 1908 (35 Stat., 461 and 463).

(e) IN UTAH.

TOWNSITES IN UTAH LANDS.

\* \* \* \* \*

That the said unallotted lands, excepting such tracts as may have been set aside as national forest reserve, and such mineral lands as were disposed of by the Act of Congress of May twenty-seventh, nineteen hundred and two, shall be disposed of under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in said proclamation, until after the expiration of sixty days from the time when the same are thereby opened to settlement and entry. \* \* \*

Act approved March 3, 1905 (33 Stat., 1069). See Acts approved May 27, 1902 (32 Stat., 263), March 3, 1903 (32 Stat., 998), and April 21, 1904 (33 Stat., 207). Also see proclamations of July 14, 31, and August 14, 1905 (34 Stat., 3122, 3139, and 3143).

(f) IN NEVADA.

TOWNSITES IN WALKER RIVER LANDS.

\* \* \* \* \*

And when such allotments shall have been made, and the consent of the Indians obtained as aforesaid, the President shall, by proclamation, open the land so relinquished to settlement, to be disposed of under existing laws.

\* \* \* \* \*

Act approved May 27, 1902 (32 Stat., 261). See proclamation of September 26, 1906 (34 Stat., 3237).

(g) IN WYOMING.

TOWNSITES IN SHOSHONE OR WIND RIVER LANDS.

\* \* \* \* \*

Sec. 2. That the lands ceded to the United States under the said agreement shall be disposed of under the provisions of the homestead, townsite, coal and mineral land laws of the United States and shall be opened to settlement and entry by proclamation of the President of the United States on June fifteenth, nineteen hundred and six, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter said lands except as prescribed in said proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry, \* \* \*.

Lands entered under the townsite, coal and mineral-land laws shall be paid for in amount and manner as provided by said laws.

Act approved March 3, 1905 (33 Stat., 1021). See proclamation of June 2, 1906 (34 Stat., 3212).

#### (h) IN MONTANA.

##### TOWNSITES IN CROW LANDS.

Sec. 5. \* \* \* That the lands not withdrawn for irrigation under said Reservation Act, which lands shall be determined under the direction of the Secretary of the Interior at the earliest practical date, shall be disposed of under the homestead, townsite, and mineral-land laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry; \* \* \*

That the price of said lands shall be four dollars per acre, when entered under the homestead laws, \* \* \*

Lands entered under the townsite and mineral-land laws shall be paid for in amount and manner as provided by said laws, but in no event at a less price than that fixed herein for such lands, if entered under the homestead laws, \* \* \*.

Act approved April 27, 1904 (33 Stat., 360 and 361). See proclamation of May 24, 1906 (34 Stat., 3204).

##### TOWNSITES IN FLATHEAD LANDS.

Sec. 17. That the Secretary of the Interior is hereby authorized and directed to reserve and set aside for townsite purposes, and to survey, lay out, and plat into town lots, streets, alleys, and parks not less than forty acres of said land at or near each of the present settlements of Arlee, Dayton, Ravalli, Dixon, and Ronan, and not less than eighty acres at the present settlements of Saint Ignatius and Polson, and at such other places as the Secretary of the Interior may deem necessary or convenient for townsites, in such manner as will best subserve the present needs and the reasonable prospective growth of said settlements.

Such townsites shall be surveyed, appraised, and disposed of as provided in section twenty-three hundred and eighty-one of the United States Revised Statutes: Provided, That any person who, at the date when the appraisers commence their work upon the land, shall be an actual resident upon any one such lot and the owner of substantial and permanent improvements thereon, and who shall maintain his or her residence and improvements on such lot to the date of his or her application to enter, shall be entitled to enter, at any time prior to the day fixed for the public sale and at the appraised value thereof, such lot and any one additional lot of which he or she may also be in possession and upon which he or she may have substantial and permanent improvements: Provided further, That before making entry of any such lot or lots the applicant



shall make proof, to the satisfaction of the register and receiver of the land district in which the land lies, of such residence, possession, and ownership of improvements, under such regulations as to time, notice, manner, and character of proof as may be described by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior: Provided further, That in making their appraisal of the lots so surveyed, it shall be the duty of the appraisers to ascertain the names of the residents upon and occupants of any such lots, the character and extent of the improvements thereon, and the name of the reputed owner thereof, and to report their findings in connection with their report of appraisal, which report of findings shall be taken as prima facie evidence of the facts therein set out. All such lots not so entered prior to the date fixed for the public sale shall be offered at public outcry in their regular order, with the other unimproved and unoccupied lots. That no lot shall be sold for less than ten dollars: And provided further, That said lots when surveyed, shall approximate fifty by one hundred and fifty feet in size.

Act of June 21, 1906 (34 Stat., 354, amending Acts April 23, 1904, 33 Stat., 302, and March 3, 1905, 33 Stat., 1048).

#### TOWNSITES IN BLACKFEET AND FORT PECK LANDS.

The paragraph relating to "Townsites" in the Act approved March 1, 1907 (34 Stat., 1039), relative to the townsites of Browning and Babb and such other townsites as may be reserved in the Blackfoot Indian Reservation, and section 14 of the Act approved May 30, 1908 (35 Stat., 563), relative to the townsite of Poplar and such other townsites as may be reserved in the "Fork Peck Indian Reservation," are in substance the same as section 17 in the Flathead Act above quoted, except that the Act concerning townsites in the Fort Peck Reservation grants a preference right of entry to five instead of two lots.

### (i) IN WASHINGTON.

#### TOWNSITES IN COLVILLE LANDS.

\* \* \* \* \*

Sec. 11. That nothing contained in this Act shall prohibit the Secretary of the Interior from reserving from said lands, whether surveyed or unsurveyed, such tracts for townsite purposes, as in his opinion may be required for the future public interests, and he may cause any such reservation, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be paid to said Indians, as provided in section six of this Act:

\* \* \* \* \*

Approved March 22, 1906 (34 Stat., 82).

#### TOWNSITES IN SPOKANE LANDS.

\* \* \* \* \*

Sec. 4. That the Secretary of the Interior \* \* \* is further authorized and directed to reserve and set aside such tracts as he may deem necessary or convenient for townsite purposes, and he may cause any such reservations to be surveyed into lots and blocks of suitable size and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the

sale of such lands shall be deposited in the Treasury of the United States to the credit of the Indians of the Spokane Reservation.

Act approved May 29, 1908 (35 Stat., 459).

(j) IN IDAHO.

TOWNSITES IN COEUR D'ALENE LANDS.

That the Secretary of the Interior shall reserve from said lands, whether surveyed or unsurveyed, such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause any such reservations, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be paid to said Indians as provided in section seven of this Act:

Act Approved June 21, 1906 (34 Stat., 337).

(k) IN CALIFORNIA AND ARIZONA

TOWNSITES IN YUMA AND COLORADO RIVER LANDS.

There is also appropriated out of any money in the Treasury not otherwise appropriated, the further sum of five thousand dollars, or so much thereof as may be necessary, to enable the Secretary of the Interior to reserve and set apart lands for townsite purposes in the Yuma Indian Reservation, California, and the Colorado River Indian Reservation in California and Arizona, and to survey, plat, and sell the tracts so set apart in such manner as he may prescribe, the net proceeds to be deposited in the Treasury of the United States to the credit of the Indians of the reservations, respectively, to be reimbursed out of the funds arising from the sale of the lands.

Act approved April 30, 1908 (35 Stat., 77).

(8) Townsites in Reclamation Projects.

\*\*\* That the Secretary of the Interior may withdraw from public entry any lands needed for townsite purposes in connection with irrigation projects under the reclamation Act of June seventeenth, nineteen hundred and two, not exceeding one hundred and sixty acres in each case, and survey and subdivide the same into town lots, with appropriate reservations for public purposes.

Sec. 2. That the lots so surveyed shall be appraised under the direction of the Secretary of the Interior and sold under his direction at not less than their appraised value at public auction to the highest bidders, from time to time, for cash, and the lots offered for sale and not disposed of may afterwards be sold at not less than the appraised value under such regulations as the Secretary of the Interior may prescribe. Reclamation funds may be used to defray the necessary expenses of appraisal and sale, and the proceeds of such sales shall be covered into the reclamation fund.

Sec. 3. That the public reservations in such townsites shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as municipal corpora-



tions the said reservations shall be conveyed to such corporations by the Secretary of the Interior, subject to the condition that they shall be used forever for public purposes.

Sec. 4. That the Secretary of the Interior shall, in accordance with the provisions of the reclamation Act, provide for water rights in amount he may deem necessary for the towns established as herein provided, and may enter into contract with the proper authorities of such towns, and other towns or cities on or in the immediate vicinity of irrigation projects, which shall have a water right from the same source as that of said project for the delivery of such water supply to some convenient point, and for the payment into the reclamation fund of charges for the same to be paid by such towns or cities, which charges shall not be less nor upon terms more favorable than those fixed by the Secretary of the Interior for the irrigation project from which the water is taken.

Sec. 5. That whenever a development of power is necessary for the irrigation of lands under any project undertaken under the said reclamation Act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to the municipal purposes, any surplus power or power privilege, and the moneys derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: Provided, That no lease shall be made of such surplus power or power privilege as will impair efficiency of the irrigation project.

Act approved April 16, 1906 (34 Stat., 116).

AMENDMENT TO ABOVE ACT.

Sec. 4. \* \* \* Whenever, in the opinion of the Secretary of the Interior, it shall be advisable for the public interest, he may withdraw and dispose of townsites in excess of one hundred and sixty acres under the provisions of the aforesaid Act, approved April sixteenth, nineteen hundred and six, and reclamation funds shall be available for the payment of all expenses incurred in executing the provisions of this Act, and the aforesaid Act of April sixteenth, nineteen hundred and six, and the proceeds of all sales of townsites shall be covered into the reclamation fund.

Act approved June 27, 1906 (34 Stat., 520).

**(9) Aliens May Acquire Town Lots in the Territories.**

Sec. 2. \* \* \* This Act shall not be construed to prevent any persons not citizens of the United States from acquiring or holding lots or parcels of lands in any incorporated or platted city, town, or village, \* \* \* in any of the Territories of the United States.

Act approved March 2, 1897 (29 Stat., 618).

**(10) Parks and Cemeteries.**

That incorporated cities and towns shall have the right, under rules and regulations prescribed by the Secretary of the Interior, to purchase for cemetery and park purposes not exceeding one-quarter section of public lands not reserved for public use, such lands to be

within three miles of such cities or towns: Provided, That when such city or town is situated within a mining district, the land proposed to be taken under this Act shall be considered as mineral lands, and patent to such land shall not authorize such city or town to extract mineral therefrom, but all such mineral shall be reserved to the United States, and such reservation shall be entered in such patent.

Act approved September 30, 1890 (26 Stat., 502).

### (11) Cemeteries.

That the Secretary of the Interior be, and he is hereby, authorized to sell and convey to any religious or fraternal association, or private corporation, empowered by the laws under which such corporation or association is organized or incorporated to hold real estate for cemetery purposes, not to exceed eighty acres of any unappropriated non-mineral public lands of the United States for cemetery purposes, upon the payment therefor by such corporation or association of the sum of not less than one dollar and twenty-five cents per acre: Provided, That title to any land disposed of under the provisions of this Act shall revert to the United States, should the land or any part thereof be sold or cease to be used for the purpose herein provided.

Act approved March 1, 1907 (34 Stat., 1052).

## TOWNSITE REGULATIONS.

### (12) County-Seat Townsites.

Under Section 2286, U. S. Rev. Stats., 160 acres of public land may be entered, at the minimum price therefor, by a county or parish, for the establishment therein of a seat of justice, the proceeds of the sale of a tract so entered to be devoted to the erection of public buildings in the county or parish making the entry.

The application should cite said section of the statute and describe the land applied for by legal subdivisions, and be signed by an officer of the county or parish authorized to do so by an order of the county or parish board, and such application should be filed in the proper local land office, together with the notice of intention to make proof in the form prescribed by Act approved March 3, 1879 (20 Stat., 472).

**Proof and Payment.**—The land must be paid for at the government price per acre after proof has been furnished satisfactorily showing—

First. Six weeks' publication and posting of notice of making proof as in homestead and other cases.

Second. The official character of the officer filing the application and the properly certified record proof of his authority therefor.

Third. The due establishment, under the laws of the State or Territory, of the seat of justice for the county upon the land applied for, and also a reference to the law creating such county.

Fourth. That the land applied for is unappropriated public land.

The corporate name of the county must be inserted in the granting clause of the certificate of entry.

### (13) Townsite Reserved by President.

Under Section 2380, U. S. Rev. Stats., public land may be reserved by the President for townsite purposes on his own motion, or peti-



tions may be addressed to him therefor, setting forth facts warranting his action under said section, duly verified by the affidavit of one or more persons, such petitions to be filed with the President, the Department, or this office, or with the local officers for transmission to this office.

**Survey and Appraisal.**—Townsites reserved under section 2380, or under any other law directing their disposition under section 2381, will be surveyed, when ordered by the Department, under the supervision of this Office, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the Secretary of the Interior. Each appraiser must take his oath of office and transmit the same to this Office before proceeding with his work. This Office must be notified by wire of the time when such appraiser or appraisers enter on duty. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for public purposes will not be appraised.

The schedule of appraisement must be prepared in duplicate on forms furnished by this Office, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to this Office, and when approved by the Secretary of the Interior one copy will be sent to the local officers.

Notices of sale will be published for thirty days (unless a shorter time be fixed in a special case) by advertisement in such newspapers as the Department may select and by posting a copy of the notice in a conspicuous place in the Register's office.

**How Sold.**—Beginning on the day fixed in the notice and continuing thereafter from day to day (Sundays and legal holidays excepted) as long as may be necessary, each appraised lot will be offered for sale at public outcry to the highest bidder for cash, at not less than its appraised value.

**Qualifications and Restrictions.**—No restriction is made as to the number of lots one person may purchase. Bids and payments may be made through agents, but not by mail or at any time or place other than that fixed in the notice of sale.

**Combinations in restraint of the sale or forbidden by section 2373 of the Revised Statutes of the United States, which reads as follows:**

Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders or prevents, or attempts to hinder or prevent any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

Suspension or postponement of the sale may be made for the time being, to a further day, or indefinitely, in case of any combination which effectually suppresses competition or prevents the sale of any lot at its reasonable value, or in case of any disturbance which interrupts the orderly progress of the sale.

**Payments and Forfeitures.**—If any bidder to whom a lot has

been awarded fails to make the required payment therefor to the Receiver, before the close of the office on the day the bid was accepted, the right thereafter to make such payment will be deemed forfeited, and the lot will be again offered for sale on the following day, or if the sale has been closed, then such lot will be considered as offered and unsold, and all bids thereafter by the defaulting bidder may, in the discretion of the local officers, be rejected.

**Lots Offered and Unsold.**—Each lot offered and remaining unsold at the close of the sale will thereafter be and remain subject to private sale and entry, for cash, at the appraised value of such lot.

**Certificates.**—All lots purchased at the same time, in the same manner, in the same townsite, and by the same person should be included in one certificate, in order to prevent unnecessary multiplicity of patents. Lots sold at private sale should be accompanied by an application therefor, signed by the applicant. Certificates will be issued upon payment of the purchase price, as in other cases.

#### **(14) Townsites Platted by Occupants.**

Title to lots and blocks in an established town on public land may be acquired under sections 2382 to 2386, inclusive, U. S. Rev. Stats.

**Survey and Plat.**—The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets and alleys to be made, and the plat and field notes thereof to be filed with the Recorder of the county in which the land is situated. The plat must show (1) that the land does not include an area in excess of 640 acres, unless the lots, buildings, and improvements cover a greater area, and then only to the extent so occupied and improved; (2) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the townsite survey are tied to a designated, permanent, and thoroughly identified monument; (3) that the streets, squares, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town are correctly delineated thereon; and (4) the exterior lines of all existing railroad rights of way and station grounds. The lots should not exceed 4,200 square feet, except in cases where the configuration necessitates a different area. The above required facts should be verified by the oath of the surveyor entered upon the margin of the plat.

A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and such plat and statements must be verified by the oath of the party acting for and in behalf of the occupants of the land.

**Transcript of Plat and Statement.**—Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each duly verified by the certificate of the County Recorder, and accompanied by the testimony of two witnesses that such town has been established in good faith, and showing the number of inhabitants thereof, and when it was so established, shall be filed with the Register and receiver of the land office in which the townsite is located, who will immediately transmit the same to this Office for consideration, and upon the approval thereof one of said



duplicate plats and statements will be returned to the local officers for their files.

**Notice of Filing Plat.**—On filing such plat and statement the Register and Receiver will prepare and conspicuously post in their office a notice to the effect that the official plat of such townsite has been filed in their office, and that they are ready to receive applications by lot occupants to make proof for and purchase the lots occupied by them, respectively. The newspapers in the vicinity should be given copies of the notice as an item of news, and such other publicity should be given it as can be done without expense.

**Adjustment to Lines of Public Survey.**—When the townsite is upon land over which the township surveys have not been extended, the Surveyor-General will be notified of the townsite survey and be furnished by this Office with an outline plat showing the exterior lines thereof, with courses and distances, the date of the survey and the approval thereof, and thereafter when the township surveys have been extended over the land the exterior lines of the townsite may be adjusted thereto where it can be done without impairing vested rights.

**Department May Make Townsite Survey.**—Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as above required, within twelve months from the establishment of a town on the public domain, will authorize the Secretary of the Interior to cause a survey and plat to be made thereof, the lots in which shall be disposed of at an increase of fifty per centum on the minimum price.

The minimum price for all lots of 4,200 square feet or less is \$10 per lot, except in cases where the Secretary of the Interior causes the survey into lots and blocks to be made by the Government, in which case the minimum price is \$15 per lot for such lots. The minimum price for all lots in excess of 4,200 square feet will be computed by adding to said minimum price of \$10 or \$15, as the case may be, the sum of \$4 for each additional 1,000 square feet or fractional part thereof in excess of 4,200 square feet.

A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the local Office his application therefor, and therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases and in manner and form and for the time as provided in the Act of March 3, 1879 (20 Stat., 472).

Preemption proof may be made before the Register and Receiver, or any officer duly authorized by law, and must show by record or documentary evidence where such evidence is usually required, and where not so required by the testimony of witnesses, (1) due publication of the Register's notice; (2) the claimant's age; (3) his citizenship; and (4) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in

the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid to the Receiver when the proof is made. Entry of public lands under other laws, or in other townsites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry. No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

Hearings will be ordered and conducted in accordance with the Rules of Practice where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application, on or before the day fixed for making proof, but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within thirty days from notice thereof.

Mineral surveys, locations, applications, and entries covering lots in such townsites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims, if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

Mineral Patents.—Lots wholly covered by outstanding mineral patents are not subject to entry under the townsite law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: "Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued."

Millsites.—The continued use and occupation within a townsite of a duly located millsite claim under section 2337, U. S. Rev. Stats., from a time prior to a settlement and occupation thereon for townsite purposes, will defeat the rights of the claimant under the townsite laws to any part of the land within such millsite.

Railroad rights of way and station grounds, when approved by the Department, are subject to all valid rights existing at the date of filing the application for such rights of way or station grounds.

Forfeiture of Preemption Right.—All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon as hereinbefore provided, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the Register and Receiver will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

Public Sale.—The notice of public sale will be prepared and published in the form and manner herein provided for the sale of town lots under section 2381, U. S. Rev. Stats., and the sale will be conducted in the same manner and subject to the same restrictions, except that no lot shall be sold for less than the minimum price



herein fixed therefor, and such lots as may not be so disposed of shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution as the Secretary of the Interior may order from time to time after at least three months' notice. Certificates and applications for private entry must be issued and filed in manner and form as provided in the regulations under said section 2381.

**(15) Townsites Entered by Corporate Authorities or Judges of County Courts as Trustees.**

**Segregation by Townsite Settlement.**—Public lands settled upon and occupied as a townsite are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, U. S. Rev. Stats.

**Entries, by Whom Made.**—If the town is incorporated the entry must be made by the corporate authorities or by the Mayor or other principal officer authorized so to do by resolution or ordinance of the Town Board or City Council. If the town is not incorporated, the entry must be made by the Judge of the County Court upon petition addressed to him therefor, signed by such number of actual occupants of lots therein as may be required by the laws of the State or Territory in which the town is situated. Private individuals, organizations, or corporations are not authorized to make such entries.

**A Double Trust.**—The entry must be made in trust (1), as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (2) as to the unoccupied lots, for the use and benefit of the municipality, the public, or the occupants collectively as a community. Such entries can not be made for the benefit of one individual, or organization, or corporation, but only for the benefit of the actual inhabitants and occupants of an established town. Prospective townsites can not be so entered.

The execution of the trust as to the disposal of the lots and the proceeds of sales is to be conducted under regulations prescribed by the State or Territorial laws. Acts of trustees not in accordance with such regulations are void.

The amount of land that may be entered under this Act is proportionate to the number of inhabitants. One hundred and less than two hundred inhabitants may enter not to exceed 320 acres; two hundred and less than one thousand inhabitants may enter not to exceed 640 acres; and where the inhabitants number one thousand and over an amount not to exceed 1,280 acres may be entered; and for each additional one thousand inhabitants, not to exceed five thousand in all, a further amount of 320 acres may be allowed. When the number of inhabitants of a town is less than one hundred the townsite shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

Unsurveyed public land upon which a town has been established may be entered hereunder. In such case a special survey should be procured by application to the Surveyor-General therefor, the cost of which survey will be paid out of the general appropriations for public surveys. When the plat of such survey is filed in the local Office, application may be made to enter the land described therein.

Declaratory statements may be filed as the initiatory step for the

entry of the land in all cases where the occupants are not ready to apply for entry, and should be so filed in order to protect their rights. The statement should be signed and filed by the officer entitled to make entry under the law, and should show the number of inhabitants, that the land is occupied for trade, business, and other townsite purposes, and the date when first so occupied, and declare the purpose of the occupants to enter it under the townsite laws. It should include only such lands as the town is entitled to enter by Government subdivisions where surveyed, and if not surveyed the land should be described so it may be easily identified.

**Proof.**—The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases, and in manner and form and for the time provided in the Act of March 3, 1879 (20 Stat., 472). The proof may be made before the Register and Receiver or any officer duly authorized by law, and must show, by record or documentary evidence, where such evidence is usually required, and where not so required by the testimony of at least two of the advertised witnesses, (1) due publication of the Register's notice; (2) if an incorporated town, proof of incorporation, which should be a certified copy of the order of incorporation, or if by legislative enactment, a citation to such act; (3) certified record evidence of the election, qualification, and the authority of the officer making entry; (4) the number of townsite occupants and claimants on each occupied Government subdivision; (5) the number of inhabitants in the townsite; (6) the character, extent, and value of townsite improvements located on each Government subdivision; and (7) the date when the land was first used for townsite purposes.

**Restrictions.**—**First. Area.**—Entry can not be made hereunder of a greater quantity of land than 2,560 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

**Second. Unpatented Mineral Claims.**—Under said sections 2386, 2392, and section 16 of the Act of March 3, 1891 (26 Stat., 1101), the title to lands acquired hereunder will be subject to all valid prior rights to unpatented mining claims or possessions held under existing law, and paramount patents may be issued thereafter to such mineral claimants, notwithstanding the prior townsite patent.

**Third. Patented Mineral Claims.**—All lands covered by patented mineral claims must be omitted from the townsite entries hereunder. Government subdivisions of land, made fractional by the omission of such patented claims, will be designated by lot numbers on a segregation diagram prepared by the Surveyor-General.

**Fourth. Reservations for the use of the United States Government** are not subject to entry hereunder.

**Fifth. Millsites.**—The continued use and occupation within a townsite of a duly located millsite claim under section 2337, U. S. Rev. Stats., from a time prior to a settlement and occupation thereof for townsite purposes, will defeat the rights of the claimant under the townsite laws to any part of the land within such millsite.

**Sixth. Railroad rights of way and station grounds,** when approved by the Department, are subject to all valid rights existing at the date of filing the application for such rights of way or station grounds.



**Change of Method of Entry.**—Where proceedings have been had for the entry of lots under sections 2382 to 2386, inclusive, U. S. Rev. Stats., but no patent has issued thereunder, the occupants may avail themselves, if the town authorities choose to do so, of the provisions of said sections 2387 to 2389 and make proof and entry thereunder: Provided, however, that in addition to the minimum price for the land applied for there shall be paid, before patent issues therefor, by the parties applying for such change of entry, all costs of surveying and platting such townsite and expenses incident thereto incurred by the Government under the provisions of said sections 2382 to 2386. On application to this Office the applicants will be informed of the amount of said expense to be paid in excess of the purchase price of the land in order to effectuate such change of entry.

**Additional Entries.**—Where townsite entry has been or may hereafter be made, under the provisions of said sections 2387 to 2393, additional entries may be made, under the provisions of section 4 of the Act approved March 3, 1877 (19 Stat., 392), of such contiguous tracts as may be occupied for townsite purposes, but such additional entry shall not, together with all prior entries made for such townsite, be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in said section 2389: Provided, however, that such area shall not exceed 2,560 acres. Such additional entries will be made in the same manner and under the same regulations as are herein provided for entries under said sections 2387 to 2393, inclusive.

**Entry and Payment.**—When townsite proof has been submitted hereunder the Register and Receiver will, if they approve the same, forward it to this office with their recommendation thereon, without collecting the purchase money and without issuing the final papers. If the proof submitted to this office is found satisfactory the local officers will be notified thereof, and if no objections exist in their office they will notify the applicant thereof, and on payment of the minimum price fixed by the law for the purchase of the land they will issue the final papers. (See Circular of January 6, 1904, 32 L. D., 481.)

### (16) Townsites on Mineral Lands.

In view of the numerous inquiries touching the rights of claimants for mineral lands situated within townsites, as opposed to rights which may be acquired to such lands under the townsite laws, it is deemed appropriate to herein recite the principal rules applicable to the subject, so far as they seem clear from the law itself or are indicated by the trend of adjudicated cases.

The general townsite laws, comprised in secs. 2380 to 2394, U. S. Rev. Stats., authorize the entry of townsites, or the sale of lots therein, upon public lands which may include unpatented mineral claims, but the rights of mineral claimants upon any land entered or sold under said townsite laws are expressly protected by secs. 2386 and 2392. These two sections recognize the superior rights, as against any townsite claimant—whether corporate, community, or individual—of all claimants for mineral veins possessed agreeably to local custom, or for any valid mining claim or possession held

under existing law. The precedence and superiority so accorded to mineral claims, however, depend in final analysis upon the question of fact whether, at date of townsite entry or lot sale, the lands claimed under the mining laws were "known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them" (31 L. D., 87). Where an affirmative showing in such behalf is made in due course by the mineral claimant, his right to a patent for the land (subject to the distinction hereinafter noted as to incorporated towns) will not be prejudiced by any previous townsite entry, deed, or patent covering the same land (26 L. D. 144; 29 L. D., 426; 32 L. D., 211; 34 L. D., 276 and 596).

Under said general townsite laws, as construed by the Department and the courts, an entry including unpatented mineral lands may be made for an incorporated town as well as for an unincorporated town, the law requiring that in the former case the entry shall be made by the corporate authorities, and in the latter by the County Judge (34 L. D., 24). While such general right of entry by or for incorporated towns and cities is therefore independent of anything contained in sec. 16 of the Act of March 3, 1891 (26 Stats., 1095), it will be seen that that section in terms announces the right to enter mineral lands. The protection afforded to mineral claims by the body of sec. 16 is similar to that given generally in said secs. 2386 and 2392, Rev. Stats., but the proviso to sec. 16 is as follows:

Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

This Department has never viewed said proviso as warranting, under any circumstances, the allowance of entry for a mineral vein independently of "the surface ground appertaining thereto," nor is such an entry provided for in the general mining laws. But said proviso creates one distinction between unincorporated and incorporated towns as regards the relative rights of townsite occupants and mineral claimants, which is, that whereas the townsite patent will, in either case, carry absolute title to any mineral not known to exist at the date of townsite entry, the adverse rights of mineral and town-lot claimants within incorporated towns are hinged, upon priority of initiation. That is to say, that after entry is made for such town, no entry by a mineral-vein applicant will be allowed for any land owned and occupied under the townsite law by a party whose possession antedated the inception of the mineral applicant's claim, even though such land was known, at date of the townsite entry, to contain valuable minerals.

Subject to the distinction above noted, the foregoing principles apply to all mineral claims within townsites entered or disposed of under any of the laws above mentioned, and also to mineral claims within townsites disposable under special Acts containing no reference to the rights of mining claimants.

The law does not require that townsite entries shall exclude any mineral claim or possession except such as may have been patented (29 L. D., 21). Mineral claims which have not been patented may be excluded from a townsite entry at the option of the townsite applicant, who must, in that event, furnish satisfactory proof that the exclusion covers a "valid mining claim or possession held under existing law" (33 L. D., 542). The exclusion of a millsite claim



from a townsite entry is necessary only in cases where the millsite claimant shall have been in occupation of the ground, under regular location, from a time antedating its occupation for townsite purposes. The issue of priority in such cases may be raised by the townsite applicant, the millsite claimant, or the Government.

## (17) Townsites on Ceded Indian Reservations.

### (a) IN OKLAHOMA.

**How Entered.**—Under section 22 of the Act approved May 2, 1890 (26 Stat., 91), townsite entries may be made in the same manner, under the same regulations, and for the same purchase price herein provided for entries under sections 2380 and 2381, 2382 to 2386, or 2387 to 2394, U. S. Rev. Stats., except that the following additional proof is required:

**Public Reserves.**—Triplicate plats of the survey of the townsite into lots and blocks must be made and filed with the local officers at the time of submitting proof, showing the reservation of not less than ten nor more than twenty acres for park, school, and other public purposes. Such plats shall be made on tracing linen and on a scale of 100 feet to 1 inch, and be provided with a margin sufficient to contain the verifications of the surveyor and the applicant acting for the town and the approval thereof by the proper officer of the Land Department. The name of the townsite must be stated on the plats, and they must contain a description of the land and the exterior boundaries thereof, according to the lines of the public surveys, and must exhibit the streets, squares, blocks, lots, and alleys, the courses and distances of the exterior lines of the squares, the width and courses of the streets and alleys, the size of the regular lots and blocks, and if a lot or block is irregular in shape the dimensions and courses of the lines of each should be indicated, so the area thereof may be readily computed, and the area of each reserve and the particular public purpose for which the reserve is made must be designated thereon. The exterior lines of all existing railroad rights of way and station grounds should also be delineated on the plat. Whenever an entry is made adjacent to a town already in existence, the streets must conform to the streets already established, and this must be stated in the affidavit of the surveyor upon the margin of each plat, which affidavit must also contain a statement showing the correctness of the survey and plats of the land, describing it, and giving the aggregate area of the tracts reserved for public purposes. The affidavit of the applicant upon the margin of each plat shall contain the statement that the application for the described tract of land as the townsite of ——— is made under the provisions of section 22 of the Act of May 2, 1890 (26 Stat., 91); that all streets, alleys, parks, and reservations are dedicated to public use and benefit; and that the plat is correct according to the survey made by the proper surveyor. Upon the receipt of such proof and plat by this office, if found to be satisfactory, the plats will be approved by the Commissioner, and two of them will be returned to the local officers, one to be retained in their files and one to be given to the applicant for filing with the Recorder of the proper county, and the local officers will be directed to take such

further action as may be prescribed by the law and regulations under which the application is made.

**Homestead Commutations for Townsites.**—Applications to commute homestead entries, or portions thereof, for townsite purposes under the provisions of the second proviso of section 22 of the Act approved May 2, 1890 (26 Stat., 91); will be addressed to the Secretary of the Interior and be filed in the District Land Office. The application may be on Form 4-001, and may be made for the commutation of the whole or a part of the homestead entry, but must be by full legal subdivisions, and any application for less than a full legal subdivision or for land involved in any contest will not be recognized.

**Proof.**—Notice of intention to make proof and the notice for publication shall be the same in all respects as that required of a claimant in making final homestead proof, with the addition that it shall state that said proof will be made under section 22 of the Act of May 2, 1890. Proof by the claimant and two of his advertised witnesses must be furnished showing—

First. Due publication of notice as in ordinary cases.

Second. That the land is required for townsite purposes.

Third. Due compliance by the entryman with the provisions of the law and of the President's proclamation under which settlement of the land became permissible.

Fourth. The claimant's citizenship and qualifications in all other respects as a homesteader, the same as in making final homestead or commutation proof.

Fifth. Due compliance by the claimant with all the requirements of the homestead law up to the date of submitting proof.

**Plats.**—At the time of submitting proof the entryman shall file therewith triplicate plats of the survey of the land into lots, blocks, streets, and alleys, in the same form and manner, and containing reservations of not less than ten nor more than twenty acres, as required by the regulations herein for the entry of townsites under said section 22, the same to be duly verified by himself and the surveyor as in said regulations required, except that his oath shall show that his application is made under the provisions of the second proviso of said section 22.

**Purchase Price.**—At the time of submitting the proof and plats, except as hereinafter provided, the claimant shall tender to the Receiver a draft on New York, made payable to the order of the Secretary of the Interior, for the purchase price of the land, exclusive of the portions reserved for public purposes, at the rate of ten dollars per acre. The Register and Receiver will thereupon transmit the application, proof, and plats to this office with their joint report as to the status of the land, and at the same time they will transmit the draft to the Secretary of the Interior, making reference in each letter to the other.

**Approval.**—If the proof and plats are found by this office to be in accordance with these regulations and sufficient in form and substance, they will be forwarded to the Secretary of the Interior with recommendation that they be approved. Should they be so approved and the receipt of the purchase price of the land be acknowledged by the Secretary, one of the plats will be retained in this office and the other two will be returned to the District Land officers, one to



be retained by them and the other delivered to the applicant to be by him filed in the office of the Recorder of Deeds of the proper county, and the Register will be directed to issue his certificate for the land embraced in said plats, excepting and excluding therefrom the tracts reserved for public purposes as designated on said plats. Receipts of the purchase money having been acknowledged by the Secretary of the Interior, no receipt will be issued by the Receiver.

**Notation on Records.**—On the issuance of the certificate of entry the Register and Receiver will note on their records the commutation of the applicant's homestead entry, in whole or in part, as the case may be. When patent is ready for delivery the entryman will be required, before the patent shall be delivered, to surrender his duplicate homestead receipt for transmittal to this office, if the entire homestead entry is commuted, or to have the commuted entry noted thereon and the same then returned to him, if commuted only in part.

**Contests and Protests.**—Where an affidavit of contest or protest against the allowance of an application hereunder is filed at the time of submitting proof, or prior thereto, containing sufficient allegations, made and corroborated under oath to warrant a hearing, and the further allegation that the same is not initiated for the purpose of harassing the claimant and extorting money from him under a compromise, but in good faith to prosecute the same to a final determination, the Register and Receiver will take appropriate action thereon in accordance with the Rules of Practice. The local officers will not require tender of the purchase price of the land until the final determination of the case favorable to the application to purchase, and when so advised they must require the applicant to immediately tender a New York draft for such purchase price, made payable to the Secretary of the Interior, and on receipt thereof they will transmit it to the Secretary and advise this office thereof. Contest or protest affidavits filed after transmittal of proof will not be considered by the Register and Receiver, but will be immediately transmitted to this office. Appeals lie from the decisions of the Register and Receiver to this office, and from the decision of this office to the Secretary of the Interior, as in other cases, and all procedure thereon will be governed by the Rules of Practice.

**Disposition of Proceeds.**—The moneys derived from the commutation of homestead entries for townsite purposes will be paid over to the proper authorities of the municipalities when organized, upon the receipt of the following required proof:

First. A duly certified copy, under seal of the order of the board of County Commissioners, declaring that the specified territory shall, with the assent of the qualified voters, be an incorporated town; also the notice for a meeting of the electors, as required by paragraph 5 of article 1, chapter 16, of the statutes of Oklahoma.

Second. A like certified copy of the statement of the inspectors filed with the Board of County Commissioners, also a like certified copy of the order of said board, declaring that the town has been incorporated, as provided by paragraph 9 of said article 1.

Third. A like certified copy of the statement of the inspectors, filed with the County Clerk, declaring who were elected to the

office of trustees, clerk, marshal, assessor, treasurer, and justice of the peace, as provided by paragraph 16 of said article 1.

Fourth. A like certified copy, by the town clerk, of the proceedings of the board of trustees electing one of their number president; also a copy of the qualifications to act, by each of the officers mentioned, as provided by paragraph 19 of said article 1.

Fifth. A certified copy by the town clerk, of the proceedings of the board of trustees, designating some officer of the municipality to make application for and to receive the money to be paid by the Secretary of the Interior.

Sixth. A proper application for the money by said designated officer.

Said application shall be addressed to the Secretary of the Interior and may either be filed in the District Land Office for transmittal to this office or forwarded by the municipal authorities direct to this office. When the same is received by this office, if the application and accompanying evidence are in accordance with the requirements herein mentioned, it will be transmitted to the Secretary of the Interior and when approved by him the money will be paid over to the designated officer to be used by the municipality for school purposes only as required.

**Public Reserves, How Entered.**—Applications for patents to the tracts reserved for public purposes, in all towns in Oklahoma created under said section 22 or under any other Act where tracts have been reserved for such purposes under said section 22, may be filed on behalf of the municipalities whose corporate limits cover the land in which such reservations are situated. The application should be made by the Mayor or other proper municipal officer, and describe the reservations to be patented according to the approved plats of said townsite, and the same should be accompanied with the proof of the municipal organization of the town similar to that above provided for the disposition of the proceeds derived from the commutation of homestead entries for townsite purposes under said section 22, and proof must also be filed therewith of the authority of the officer filing the application to make the same with the proper record evidence of his election and qualification as such officer. The application and proof must be filed in the District Land Office, and if the officers thereof find the same sufficient under these regulations the Register will issue the certificate of entry in the form provided therefor.

**Reservations in Vacated Townsites.**—Under the Act approved May 11, 1896 (29 Stat., 116), where a townsite or an addition to a townsite, in a homestead commuted to a townsite entry under the second proviso of section 22 of the Act Approved May 2, 1890 (26 Stat., 91), has been vacated under the laws of Oklahoma, and patents for the public reservations therein have not been issued, such reservations will be disposed of in the following manner:

**First. Application and Proof by the Original Entryman.**—Application for a patent to such reservations may be filed by the original entryman within six months from the vacation of the townsite, and proof must be filed by him, with the Register and Receiver, of the due vacation of such townsite in accordance with the requirements of the laws of Oklahoma, which proof must consist of a copy of the record evidence of such vacation duly certified. Such proof



must also be accompanied with evidence that the corporate authorities of the municipality, if one be organized, in which the reservations were situated prior to such vacation, have been personally served thirty days prior to making such proof with notice of the application and of the date the proof will be made. If the proof be found sufficient the entry will be allowed for the reservations as described in the townsite plat upon receipt of the payment of the homestead price. If the municipality is represented at the time of making proof, it may be heard in opposition to the application and decision be rendered thereon subject to appeal as in other cases.

Second. Reservations Disposed of as Isolated Tracts.—In case of the failure of the original entryman to apply for patent to such reservations within six months from the vacation of such townsite, or in case such reserves have been patented to the municipality and it has ceased to exist by reason of such vacation, the reservations will be disposed of as isolated tracts under the provisions of section 2455, U. S. Rev. Stats., and the acts amendatory thereof, and the regulations issued thereunder.

Third. Reservations may be sold by an existing municipal corporation, upon the vacation of the townsite, where patent has been issued to such municipality therefor, the proceeds of such sale to be covered into the school fund of such corporation. See case of City of Enid (30 L. D., 352).

#### (b) IN MINNESOTA.

Townsites in ceded Indian lands under the Act approved February 9, 1903 (32 Stat., 820), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

#### (c) IN SOUTH DAKOTA.

Townsites in Rosebud ceded Indian lands in Tripp County, under the Act approved March 2, 1907 (34 Stat., 1230 and 1231), will be disposed of in accordance with the regulations herein provided for the disposal of townsites under section 2381, U. S. Rev. Stats.

#### (d) IN NORTH AND SOUTH DAKOTA.

Townsites in Cheyenne River and Standing Rock Indian lands, under the Act approved May 29, 1908 (35 Stat., 461 and 463), will be disposed of in accordance with the regulations herein provided for the disposal of townsites under section 2381, U. S. Rev. Stats.

#### (e) IN UTAH.

Townsites in the Uintah Indian lands, under Act approved March 3, 1905 (33 Stat., 1069), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

#### (f) IN NEVADA.

Townsites in the Walker River Indian lands, under Act approved May 27, 1902 (32 Stat., 261), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

## (g) IN WYOMING.

Townsites in Shoshone or Wind River Indian lands, under Act approved March 3, 1905 (33 Stat., 1021), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

## (h) IN MONTANA.

Townsites in Crow Indian lands, under Act approved April 27, 1904 (33 Stat., 360 and 361), will be disposed of in accordance with the regulations herein provided for townsites created under sections 2380 and 2381, 2382 to 2386, or 2387 to 2393, U. S. Rev. Stats.

Townsites in Flathead Indian Lands—Survey and Appraisal.—Under the Act approved June 21, 1906 (34 Stat., 354), townsites may be selected and reserved by the Secretary of the Interior, and thereafter they will be surveyed and platted into lots, blocks, streets, and alleys, and the lots appraised in accordance with the regulations in this circular provided for townsites surveyed, platted, and appraised under section 2381, U. S. Rev. Stats., but the appraisers shall, in addition to the work in such regulations required, also ascertain the names of the residents upon, and occupants of, any lots in such townsite, the character and extent of the improvements on such lots, and the name of the reputed owner thereof, and they shall report their findings thereon in connection with their report of appraisals, which report of findings shall be taken as *prima facie* evidence of the facts therein set out.

Filing of Plat and Appraisalment.—When the plat and appraisalment lists are approved, the same will be sent to the Register and Receiver for filing, and immediately on receipt thereof they will prepare a notice to the effect that such plat and list have been filed with them, stating the date thereof, and that they are ready to receive applications to make proof and entry for improved lots by persons claiming a preference right to enter the same at the appraised price, which applications and the proof thereon must be filed and made in time to secure entry prior to the date fixed for the public sale. Such notice will be given publicity by posting a copy thereof in a conspicuous place in the Register's office, by giving copies thereof to the local newspapers as an item of news, by transmitting copies thereof to the postmaster in each townsite in which there is a post-office, and where there is none, then to the postmaster nearest the land, with a request that he post the same in a conspicuous place in his office, and by giving such further publicity thereto as may be done without incurring expense.

Preference Right, Application, and Proof.—A preference right of entry, at the appraised price, of not exceeding two lots, is accorded an actual resident, to secure which entry the claimant must file in the District Land Office, in time to make proof and secure entry thereof prior to the date of public sale, an application therefor, showing that at the date the appraisers commenced their work upon the land the claimant was an actual resident upon one of the lots applied for, and the owner of substantial and permanent improvements thereon, and also the owner at said date of sub-



stantial and permanent improvements upon the other lot, if two are applied for, and that such residence and improvements have been maintained thereon to date of filing application. A notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense, as in ordinary cases, and in manner and form and for the time provided in the Act approved March 3, 1879 (20 Stat., 472).

The proof may be made before the Register and Receiver or any officer duly authorized by law, and must show, by record or documentary evidence where such evidence is usually required, and where not so required, by the testimony of witnesses, (1) due publication of the Register's notice; (2) the applicant's possession of and actual residence upon one of the lots applied for and his or her ownership of substantial and permanent improvements thereon at the date the appraisers commenced their work upon the land; (3) his or her possession and ownership of substantial and permanent improvements upon the other lot at the date the appraisers commence their work upon the land, if two lots are applied for; (4) the maintenance of such residence, possession, and improvements to date of filing the application; and (5) applicant's age, and if a minor or a married woman, whether he or she lives separate and apart from his or her parents and husband. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The appraised purchase price of each lot must be paid to the Receiver at the time of submitting proof, except as hereinafter provided, and if the proof is found sufficient entry will be issued thereon.

**Forfeiture, Qualification, and Restrictions.**—All preference right of entry of improved or occupied lots, unentered on the day fixed for the public sale, will be forfeited, unless a contest be pending thereon as hereinafter provided, and such lots will be offered at public outcry in their regular order with the other unimproved and unoccupied lots. When notified of the date fixed for the public sale, the Register and Receiver will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale. Entry of public land under other laws, or in other townsites, or ownership of more than 320 acres will not disqualify an applicant. No entry can be made of an improved lot on which the claimant does not reside, unless his or her residence lot is included in the same or a previous entry.

**Contests.**—Hearings will be allowed and conducted in accordance with the Rules of Practice where two or more adverse applications are filed for the same lot, or where a sufficient contest or protest affidavit is filed against an application on or before the day fixed for making proof, but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within thirty days from notice thereof.

**Public Sale.**—The notice of public sale will be prepared and published in the form and manner herein provided for the sale of town lots under section 2381, U. S. Rev. Stats., and the sale will be conducted in the same manner and be subject to the same restric-

tions, and the certificates and applications for private entry must also be issued and filed in manner and form as provided in the regulations under said section 2381.

Townsites in Blackfeet and Fort Peck Indian Lands.—That portion of the Act approved March 1, 1907 (34 Stat., 1039), relating to townsites in the Blackfeet Indian lands, and section 14 of the Act approved May 30, 1908 (35 Stat., 563), relating to townsites in the Fort Peck Indian lands, will be administered in accordance with the regulations in this circular provided for townsites in the Flathead Indian lands, except that in townsites in the Fort Peck Indian lands five lots instead of two may be awarded preference-right claimants, under the conditions and restrictions provided in said regulations for the entry of two lots.

#### (i) IN WASHINGTON.

Townsites in Colville and in Spokane Indian lands under the Acts approved March 22, 1906 (34 Stat., 82, sec. 11), and May 29, 1908 (35 Stat., 459, sec. 4), respectively, will be selected and reserved by the Secretary of the Interior, and will thereafter be surveyed, appraised, and disposed of in accordance with the regulations in this circular provided under section 2381, U. S. Rev. Stats.

#### (j) IN IDAHO.

Townsites in Coeur d'Alene Indian lands, under Act approved June 21, 1906 (34 Stat., 337), will be selected and reserved by the Secretary of the Interior and thereafter surveyed, appraised, and disposed of in accordance with the regulations in this circular provided under section 2381, U. S. Rev. Stats.

#### (k) IN CALIFORNIA AND ARIZONA.

Townsites in Yuma and Colorado River Indian lands, under that portion of the Act approved April 30, 1908 (35 Stat., 77), relating to townsites in said lands, will be selected and reserved by the Secretary of the Interior and will be thereafter surveyed, appraised, and disposed of in accordance with the regulations in this circular provided under section 2381, U. S. Rev. Stats.

#### (18) Townsites in Reclamation Projects.

Withdrawal, Survey, Appraisement, and Sale.—Townsites in connection with irrigation projects may be withdrawn and reserved by the Secretary of the Interior under the Acts approved April 16 and June 27, 1906 (34 Stat., 116, secs. 1, 2, and 3, and 519, sec. 4), respectively, and thereafter will be surveyed into town lots with appropriate reservations for public purposes, and will be appraised and sold from time to time in accordance with the regulations in this circular provided under section 2381, U. S. Rev. Stats. See Amendment, page 391½.

The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances the municipality shall



apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required under the regulations in this circular for patents to public reserves in Oklahoma townsites under section 22 of the Act approved May 2, 1890 (26 Stat., 91).

### (19) Parks and Cemeteries.

The right of entry under the Act approved September 30, 1890 (26 Stat., 502), is restricted to incorporated cities and towns, and each of such cities and towns shall be allowed to make entries of tracts of unreserved and unappropriated public land, by Government subdivisions, not exceeding, in all entries hereunder by such city or town, a quarter section in area, all of which must lie within three miles of the corporate limits of the city or town for which the entries are made.

Where on Unsurveyed Land.—If the public surveys have not been extended over the land sought by any city or town under the provisions of said Act, it shall first be necessary for the proper corporate authority to apply to the surveyor-general of the district in which the tract in question is located for a special survey of the outboundaries of such tract. The application should describe the character of the land sought to be surveyed and, as accurately as possible, its area and geographical location. Tracts covered by such special surveys must be as nearly as practicable in square form, and entries of the same will not be allowed until after the surveys shall have been approved by the surveyor-general and accepted by the Commissioner of the General Land Office. The current appropriation for "surveying the public lands" being applicable to the survey of "lines of reservations," as well as to the extension of the ordinary lines of the system of public-land surveys, the cost of the surveys of all unsurveyed lands selected under the provisions of said Act of September 30, 1890, will be paid for out of said appropriation, the same as the special surveys of the outboundaries of townsites and for like reasons (see case of Fort Pierre, 18 C. L. O., 117), and the deputies employed by the surveyor-general to execute such special surveys will report whether the land is either mineral in character or within an organized mining district.

Application and Proof.—An application for the purposes indicated herein can only be made by the municipal authorities of an incorporated city or town; and in all cases the entries will be made and patents issued to the municipality in its corporate name, for the specific purpose or purposes mentioned in said Act.

The land must be paid for at the Government price per acre, after proof has been furnished satisfactorily showing—

First—Six weeks' publication of notice of intention to make entry, in the same manner as in homestead and other cases.

Second. The official character and authority of the officer or officers making the entry.

Third. A certificate of the officer having custody of the record of incorporation, setting forth the fact and date of incorporation of the city or town by which entry is to be made, and the extent and location of its corporate limits.

Fourth. The testimony of the applicant and two published witnesses to the effect that the land applied for is vacant and unap-

propriated by any other party, and as to whether the same is either mineral in character or located within an organized mining district or within a mining region.

Fifth. In case the land applied for is described by metes and bounds, as established by a special survey of the same, that the applicant and two of the published witnesses have testified from personal knowledge obtained by observation and measurements that the land to be entered is wholly within 3 miles of the corporate limits of the city or town for which entry is to be made.

Certificates.—Where the proof shows that the land is mineral in character, located in a mining district, or is within a region known as mineral lands, the certificate of entry shall contain the following proviso:

Provided, That no title shall be hereby acquired to any mineral deposits within the limits of the above-described tract of land, all such deposits therein being reserved as the property of the United States.

## (20) Cemeteries.

Who May Enter.—Under the Act approved March 1, 1907 (34 Stat., 1052), the right to purchase public land for cemetery purposes is limited to religious, fraternal, and private corporations or associations, empowered to hold real estate for cemetery purposes by the laws under which they are organized. Such corporation or association shall be allowed to make but one entry of not more than eighty acres of contiguous tracts by Government subdivisions of nonmineral, unreserved, and unappropriated public land.

Where on Unsurveyed Land.—If the public surveys have not been extended over the land so sought to be entered, the corporation or association should first apply to the proper surveyor-general for a special survey of the exterior lines of the tract desired, describing the topographical character of the land and its area and geographical location as accurately as possible. Such tracts must be as nearly as practicable in a rectangular form, and after the survey and plat thereof has been made, approved by the surveyor-general, accepted by this office, and filed in the local office, application may then be made for the entry of the land under said Act. The cost of such surveys will be paid out of the current appropriation for "surveying the public lands," and the deputies employed will report whether the land is mineral in character.

The proof must satisfactorily show—

First. The filing of a notice of intention to make proof, the issuance, in manner and form so far as possible as in other cases provided, of the publication notice, to be published and posted for the time and in the manner provided by the Act of March 3, 1879 (20 Stat., 472), and the regulations thereunder.

Second. The official character of the officer or officers applying on behalf of the association or corporation to make the entry, and his or their express authority to do so conferred by action of the association.

Third. A copy of the record, certified by the officer having charge thereof, showing the due incorporation and organization and date thereof of the association or corporation and its location and address. The law under which it is organized and by which it



derives its authority to hold real estate for cemetery purposes must also be cited.

Fourth. That the land applied for is nonmineral, vacant, and unappropriated public land, and the extent to which it is used for cemetery purposes, and when first so used, if it is so used, which must be shown by the testimony of the applicant and two of the advertised witnesses.

Price.—The land must be paid for at such price per acre as shall be determined by the Commissioner of the General Land Office, provided that in no case shall the price be less than \$1.25 per acre.

Entries under this Act must issue to the association or corporation in its corporate name, and the granting clause in the certificate should state that the patent to be issued for the tract described is "for cemetery purposes, subject to reversion 'to the United States should the land or any part thereof be sold or cease to be used for the purpose' in said Act provided." Inasmuch, however, as the Commissioner of this office determines the amount of the purchase price under the existing conditions in each particular case, the Register and Receiver will, when proof is made to their satisfaction, immediately forward such proof to this office with their recommendation thereon without collecting any money as the purchase price and without issuing the final papers. If this office finds the proof satisfactory, the Commissioner will fix the purchase price, and the local officers will, on being notified thereof and no objection appearing thereto in their office, notify the applicant of the amount required and allow him thirty days from service of such notice to pay such purchase price, and on receipt thereof the entry will be issued.

Special order to Commissioner of June 11, 1896, is reissued as follows:

In addition to cases specified in departmental order of January 29, 1896 (22 L. D., 120), you are directed to transmit for disposition as "current work" all cases involving townsite entries.

In all cases classified as current work, when sending out notice of your decisions, you will inform the parties interested of that fact, and that the rules relating to filing arguments will be strictly enforced. 22 L. D., 675.

Fred Dennett,  
Commissioner.

This circular approved, August 7, 1909.

Jesse E. Wilson,  
Acting Secretary.

## APPENDIX.

### FORMS.

#### SCHEDULE OF APPRAISEMENT.

Valuation of lots and blocks in the townsite of ———, State of ———, appraised under—

Block.	Lot.	Area.	Valuation.		Character of land.	Remarks.
			Dollars.	Cents.		
.....	.....	.....	.....	.....	.....	.....

....., 19—.

We, the undersigned, constituting the Board of Appraisers appointed under ———, to examine and appraise the surveyed and platted lots

No. —,

\_\_\_\_\_, \_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_ County, State of \_\_\_\_\_, do hereby apply to purchase, under sections 2387 to 2393, inclusive, U. S. Rev. Stats., \_\_\_\_\_, Sec. \_\_\_\_\_, T. \_\_\_\_\_, R. \_\_\_\_\_ of \_\_\_\_\_ Principal Meridian, containing \_\_\_\_\_ acres, at the sum of \$ \_\_\_\_\_ for the townsite of \_\_\_\_\_.

I hereby certify that the land above described contains \_\_\_\_\_ acres, and that the purchase price therefor is \$\_\_\_\_\_.

No. ———.

\_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_ County, State of \_\_\_\_\_, do hereby apply to purchase, under \_\_\_\_\_, Lot \_\_\_\_\_, Block No. \_\_\_\_\_, in the townsite of \_\_\_\_\_, \_\_\_\_\_, as delineated and designated in the approved plat thereof, containing \_\_\_\_\_, \_\_\_\_\_, at the sum of \$\_\_\_\_\_.

I hereby certify that the land above described contains \_\_\_\_\_, and that the purchase price therefor is \$\_\_\_\_\_.

No. —.

I, \_\_\_\_\_, of \_\_\_\_\_ County, State of \_\_\_\_\_, do hereby apply to purchase, under \_\_\_\_\_, lot No. \_\_\_\_\_, in Block No. \_\_\_\_\_, in the townsite of \_\_\_\_\_, \_\_\_\_\_, as delineated and designated in the approved plat thereof, containing \_\_\_\_\_, at the sum of \$\_\_\_\_\_, basing said application on the following facts: That I am \_\_\_\_\_ years of age (and, if under 21 years of age, add, and the head of a family); that I am a native-born citizen of the United States (or have declared my intention to become a citizen of the United States); that my post-office address is \_\_\_\_\_, \_\_\_\_\_; and that my settlement, the date thereof, and the value and character of my improvements on said lot are as follows: \_\_\_\_\_.

I hereby certify that the lot above described contain- ———, and that the purchase price thereof is \$———.

APPLICATION FOR PREFERENCE RIGHT OF ENTRY IN FLATHEAD  
INDIAN LANDS, MONTANA.

I, \_\_\_\_\_, of \_\_\_\_\_ County, State of \_\_\_\_\_, do hereby apply to purchase, under the Act approved June 21, 1906 (34 Stat., 354), Lot No. \_\_\_\_\_,



in Block No. —, in the townsite of —, —, as delineated and designated on the plat thereof approved by the Department of the Interior on —, 19—, containing —, at the appraised price of \$—, basing said application on actual residence and ownership of substantial and permanent improvements on said lot as follows: —.

I hereby certify that the lot above described contain—, and that the appraised purchase price thereof is \$—.

—, Register.

#### NOTICE OF INTENTION TO MAKE PROOF.

Department of the Interior,

Land Office at —, —, 19—.

—, —, as —, having applied to purchase, under —, the —, hereby give notice of — intention to make proof, to establish — right under said law to enter the land above described, before the —, at —, —, on —, 19—, by two of the following witnesses:

—, of —, —.  
—, of —, —.  
—, of —, —.  
—, of —, —.

Notice of the above application will be published in the —, printed at —, —, which I hereby designate as the newspaper published nearest the land described.

—, Register.

#### NOTICE FOR PUBLICATION OF MAKING PROOF.

Department of the Interior,

Land Office at —, —, 19—.

Notice is hereby given that —, as —, has filed notice of his intention to make proof of his right to enter, under —, the —, and that said proof will be made before — at —, —, on —, 19—, and he names as his witnesses in making such proof—

—, of —, —.  
—, of —, —.  
—, of —, —.  
—, of —, —.

—, Register.

#### NOTICE OF PUBLIC SALE.

Department of the Interior,

Land Office at —, —, 19—.

Notice is hereby given that on the — day of —, 19—, at —, —, beginning at 10 a. m. of that day and continuing thereafter from day to day as long as may be necessary, we will offer at public outcry to the highest bidder for cash at not less than the appraised value thereof —, in the townsite of —, —, as delineated and designated on the plat of said townsite, approved —, —, now on file in our office.

The purchase price must be paid in cash to the receiver before the close of his office on the day the bid is accepted.

All parties are warned under the penalty named in section 2373, U. S. Rev. Stats., against any combination or action tending to hinder or embarrass the sale of said lots or to prevent free competition between bidders.

—, Register.

—, Receiver.

No. —.

#### CERTIFICATE OF ENTRY UNDER SECTION 2387.

Department of the Interior,

Land Office at —, —, 19—.

I hereby certify that, in pursuance of sections 2387 to 2393, U. S. Rev.

Stats., \_\_\_\_\_, of \_\_\_\_\_ County, State of \_\_\_\_\_, ha— this day purchased for the sum of \$\_\_\_\_\_, the \_\_\_\_\_ of section No. \_\_\_\_\_, in township No. \_\_\_\_\_, of range No. \_\_\_\_\_, of the \_\_\_\_\_ Principal Meridian, containing \_\_\_\_\_ acres, at the rate of \$\_\_\_\_\_ per acre for the townsite of \_\_\_\_\_.

Now, therefore, be it known that on the presentation of this certificate to the Commissioner of the General Land Office, the said \_\_\_\_\_ shall be entitled to receive a patent for the land above described, in trust for the several use and benefit of the occupants thereof, according to their respective interests.

\_\_\_\_\_, Register.

#### CERTIFICATE OF ENTRY FOR TOWN LOTS.

No. \_\_\_\_\_.

Department of the Interior,  
Land Office at \_\_\_\_\_, \_\_\_\_\_, 19—.

I hereby certify that in pursuance of \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_ County, has this day purchased for the sum of \$\_\_\_\_\_, Lot \_\_\_\_\_, No. \_\_\_\_\_, in Block No. \_\_\_\_\_, in the townsite of \_\_\_\_\_, containing \_\_\_\_\_, as the same \_\_\_\_\_ delineated and designated on the plat of said townsite, approved by the Secretary of the Interior on \_\_\_\_\_.

Now, therefore, be it known, that on the presentation of this certificate to the Commissioner of the General Land Office the said purchaser shall be entitled to receive patent to said lot \_\_\_\_\_.

\_\_\_\_\_, Register.

#### OKLAHOMA TOWNSITE RESERVATION CERTIFICATE.

No. \_\_\_\_\_.

Department of the Interior,  
Land Office at \_\_\_\_\_, \_\_\_\_\_, 19—.

I hereby certify that, pursuant to the provisions of section 22 of the Act of May 2, 1890 (26 Stat., 81), and the regulations thereunder, \_\_\_\_\_ (mayor or trustee) of the town (or city) of \_\_\_\_\_, in \_\_\_\_\_ County, Oklahoma, has made application for patent to said town (or city) for \_\_\_\_\_ in the townsite of \_\_\_\_\_, located on \_\_\_\_\_, Sec. \_\_\_\_\_, T. \_\_\_\_\_, R. \_\_\_\_\_, I. M., Oklahoma, reserved for said public purposes and delineated and designated on the plats of said townsite, approved by \_\_\_\_\_ on \_\_\_\_\_, said application being accompanied by satisfactory proof of the organization of said municipality, and of said \_\_\_\_\_ authority to make application for patent for said reservations.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said town (or city) of \_\_\_\_\_ shall be entitled to a patent for the tract (or tracts) of land above described, to be maintained for said public purposes as provided in the Act herein mentioned.

\_\_\_\_\_, Register.

[Public—No. 417.]

[S. 10574.]

An Act to amend an act entitled "An Act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of an Act entitled "An Act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six, be amended so as to read as follows:

"Sec. 5. That whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said reclamation



Act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the money derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: Provided, That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project: Provided further, That the Secretary of the Interior is authorized, in his discretion, to make such a lease in connection with Rio Grande project in Texas and New Mexico for a longer period not exceeding fifty years, with the approval of the water users' association or associations under any such project, organized in conformity with the rules and regulations prescribed by the Secretary of the Interior in pursuance of section six of the reclamation Act approved June seventeenth, nineteen hundred and two."

Approved, February 24, 1911.

#### REAPPRAISEMENT AND SALE OF UNSOLD LOTS IN RECLAMATION TOWN SITES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, whenever he may deem it necessary, to reappraise all unsold lots within town sites on projects under the reclamation Act heretofore or hereafter appraised under the provisions of the Act approved April sixteenth, nineteen hundred and six, entitled "An Act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes," and the Act approved June twenty-seventh, nineteen hundred and six, entitled, "An Act providing for the subdivision of lands entered under the reclamation Act, and for other purposes;" and thereafter to proceed with the sale of such town lots in accordance with said Acts.

Sec. 2. That in the sale of town lots under the provision of the said Acts of April sixteenth and June twenty-seventh, nineteen hundred and six, the Secretary of the Interior may, in his discretion, require payment for such town lots in full at time of sale or in annual installments, not exceeding five, with interest at the rate of six per centum per annum on deferred payments.

(Public No. 206, Approved June 11, 1910.)

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**GENERAL LAND OFFICE REGULATIONS CONCERNING THE  
SELECTION OF DESERT LANDS BY CERTAIN STATES  
AND TERRITORIES UNDER THE ACT OF CONGRESS  
APPROVED AUGUST 18, 1894, WITH AMENDMENTS, AND  
THE MAKING OF FINAL PROOF FOR DESERT LANDS  
SEGREGATED THEREUNDER. APPROVED APRIL 9,  
1909.**

**STATUTES.**

(A) Section 4 of the Act of August 18, 1894, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes" (28 Stat., 372-422), authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to patent to the States of Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, North Dakota, South Dakota, and Utah, or any other States, as provided in the Act, in which may be found desert lands, not to exceed 1,000,000 acres of such lands to each State, under certain conditions.

The text of the Act is as follows:

Sec. 4. That to aid the public-land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers, the Secretary of the Interior, with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the State, to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the Act entitled "An Act to provide for the sale of desert land in certain States and Territories," approved March third, eighteen hundred and seventy-seven, and the Act amendatory thereof, approved March third, eighteen hundred and ninety-one, binding the United States to donate, grant, and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State, as the State may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty-acre tract cultivated by actual settlers, within ten years next after the passage of this Act, as thoroughly as is required of citizens who may enter under the said desert-land law.

Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated, which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement.

As fast as any State may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: Provided, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under



the provisions of this section, there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated one thousand dollars.

In the Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes, approved June 11, 1896 (29 Stat., 413-434), there is, under the head of appropriation for "Surveying public lands," the following provision:

That under any law heretofore or hereafter enacted by any State providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section four of an Act entitled "An Act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such State without regard to settlement or cultivation: Provided, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

(B) The limitation of time in the above-quoted section 4 was modified by section 3 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1902, and for other purposes," approved March 3, 1901 (31 Stat., 1133-1188), which provides as follows:

Sec. 3. That section four of the Act of August eighteenth, eighteen hundred and ninety-four, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," is hereby amended so that the ten years' period within which any State shall cause the lands applied for under said Act to be irrigated and reclaimed, as provided in said section as amended by the Act of June eleventh, eighteen hundred and ninety-six, shall begin to run from date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if the State fails within said ten years to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain.

By the Act of March 1, 1907 (34 Stat., 1057), the provisions of the foregoing Acts were extended to the desert lands within the former Southern Ute Indian Reservation in Colorado.

Said Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section four of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the acts amendatory thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively be, and are hereby, extended over and shall apply to the desert lands included within the limits of the former Southern Ute Indian Reservation in Colorado not included in any forest reservation: Provided, That before a patent shall issue for any of the lands aforesaid under the terms of the said act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury

of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the Act of June fifteenth, eighteen hundred and eighty, entitled "An Act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

Sec. 2. That no lands shall be included in any tract to be segregated under the provisions of this Act on which the United States Government has valuable improvements or which have been reserved for Indian schools or farm purposes.

(C) In the Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes, approved May 27, 1908 (35 Stat., 317-347), there is under the head of "Arid lands in Idaho and Wyoming," the following provision:

That an additional one million acres of arid lands within each of the States of Idaho and Wyoming be made available and subject to the terms of section four of an Act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and that the States of Idaho and Wyoming be allowed under the provisions of said Acts said additional area or so much thereof as may be necessary for the purposes and under the provisions of said Acts.

(D) The Act of February 18, 1909 (Public, No. 244), extending the provisions of section 4, Act of August 18, 1894, *supra*, and the amendments thereof, to the Territories of New Mexico and Arizona, reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the provisions of section four of the Act of Congress approved August eighteenth, eighteen hundred and ninety-four, being chapter three hundred and one to Supplement to Revised Statutes of the United States, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," and the amendments thereto be, and the same are hereby, extended to the Territories of New Mexico and Arizona, and that said Territories upon complying with the provisions of said Act shall be entitled to have and receive all of the benefits therein conferred upon the States.

Sec. 2. That this Act shall be in full force and effect from and after its passage.

(E) The provisions of said section 4, Act of August 18, 1894, and the amendments thereof, were also extended to the desert lands within the former Ute Indian Reservation in Colorado, by the Act of February 24, 1909 (Public, No. 255). The text of which is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provision of section four of "An Act making appropriation for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the amendments thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively, be, and are hereby, extended over and shall apply to the desert lands within the limits of all that portion of the former Ute Indian Reservation, not included in any national forest, in the State of Colorado, described and embraced in the Act entitled "An Act relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians," approved July



twenty-eighth, eighteen hundred and eighty-two: Provided, That before a patent shall issue for any of the lands aforesaid under the terms of the Act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the Act of June fifteenth, eighteen hundred and eighty, entitled, "An Act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

Sec. 2. That no lands shall be included in any tract to be segregated under the provisions of this Act on which the United States Government has valuable improvements, or which have been reserved for any Indian schools or farm purposes.

### REGULATIONS.

1. Under the provisions of the Acts quoted the States and Territories are allowed ten years from the date of the approval of the application for the segregation of the land by the Secretary of the Interior, in which to irrigate and reclaim them. The Secretary of the Interior may, however, in his discretion, extend the time for irrigating and reclaiming the lands for a period of five years, or he may restore to the public domain the lands not reclaimed at the expiration of the ten years, or of the extended period.

2. The lands selected under these Acts must all be desert lands as defined by the Acts of 1877 and 1891, and the decisions and regulations of this department therein provided for.

Lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

Lands occupied by bona fide settlers and lands containing valuable deposits of coal or other minerals are not subject to selection.

3. The second paragraph of section 4, before quoted, provides that before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the land selected and proposed to be irrigated, which shall exhibit a plan showing the mode of contemplated irrigation and the source of the water. In accordance with the requirements of the Act, the State must give full data to show that the proposed plan will be sufficient to thoroughly irrigate and reclaim the land and prepare it to raise ordinary agricultural crops; for which purpose a statement by the state engineer of the amount of water available for the plan of irrigation will be necessary. The other data required can not be fully prescribed, as it will depend upon the nature of the plan submitted. All information necessary to enable this office to judge of its practicability for irrigating all the land selected must be submitted. Upon filing of the map showing the plan of irrigation, and the lands selected, such lands will be withheld from other disposition until final action is had thereon by the Secretary of the Interior. If such final action be a disapproval of the map and plan, the lands selected shall, without further order, be subject to disposition as if such reservation had

never been made; and the local officers will make the appropriate notations on the tract books and plat books, opposite those previously made, in accordance with the requirements of paragraph 7.

4. The map must be on tracing linen, in duplicate, and must be drawn to a scale not greater than 1,000 feet to 1 inch. A smaller scale is desirable, if the necessary information can be clearly shown. The map and field notes in duplicate must be filed in the local land office for the district in which the land is located. If the lands selected are located in more than one district, duplicate map and field notes need be filed in but one district and single sets in the others. Each legal subdivision of the land selected should be clearly indicated on the map by a check mark, thus:  $\checkmark$ . The map and field notes must show the connections of termini of a canal or of the initial point of a reservoir with public survey corners, the connections with public survey corners wherever section or township lines are crossed by the proposed irrigation works, and must show full data to admit of retracing the lines of the survey of the irrigation works on the ground.

5. The map should bear an affidavit of the engineer who made or supervised the preparation of the map and plan, Form 1, page 11, and also of the officer authorized by the State to make its selections under the Act, Form 2, page 11. The map should be accompanied by a list in triplicate of the lands selected, designated by legal subdivisions, properly summed up at the foot of each page, and at the end of the list. If the lands selected are located in more than one district, a list in triplicate must be filed in each office, describing the lands selected in that district. Clear carbon copies are preferred for the duplicate and triplicate lists. The lists should be dated and verified by a certificate of the selecting agent, Form 3, page 12. The party appearing as agent of the State must file with the Register and Receiver written and satisfactory evidence, under seal, of his authority to act in the premises; such evidence once filed need not be duplicated during the period for which the agent was appointed. The State should number the lists in consecutive order, beginning with No. 1, regardless of the land office in which they are to be filed. Form of title page to be prefixed to the lists of selections will be found on page 12, marked "A." Lists received at this office containing erasures will not be filed, but will be returned in order that new ones may be prepared. When a township has not been subdivided, but has had its exteriors surveyed, the whole township may be designated, omitting, however, the sections to which the State may be entitled under its grant of school lands. When the records are in such condition that the proper notations may be made, a section or part of a section of unsurveyed land may be designated in the list; but no patent can issue thereon until the land has been surveyed.

6. A contract in the form herein prescribed (Form 5, p. 13), in duplicate, signed by the state officer authorized to execute such contract, must also be filed. A carbon copy of the contract will not be accepted.\* The person who executes the contract on behalf of the State must furnish evidence of his authority to do so.

\*Printed copies of the contract, in which the list of lands can be inserted, will be furnished to the State, or to parties dealing with it, on application to the General Land Office.



7. The lists must be carefully and critically examined by the Register and Receiver, and their accuracy tested by the plats and records of their office. When so examined and found correct in all respects, they will attach a certificate at the foot of each list (Form 4, page 12). The Register must note on the map, lists, contracts, and all papers the name of the land office and the date of filing over his written signature and will thereupon post the selections in ink in the tract book after the following manner: "Selected ———, 19—, by ——— ———, the State ———, as desert land, Act of August 18, 1894, serial No. ———," and on the plats he will mark the tracts so selected "State desert land selection." After the selections are properly posted and marked on the records, the lists, maps, and all papers will be transmitted to the General Land Office.

For rejected selections a new list will be required, upon which the Register will note opposite each tract the objections appearing on the records and indorse thereon his reasons in full for refusing to certify the same. The State will be allowed to appeal in the manner provided for in the Rules of Practice. It is required that clear lists of approvals shall in every case be made out by the selecting agents, if after the above examination one or more tracts have been rejected, showing clearly and without erasure the tracts to which the Register is prepared to certify. On the map of lands selected the Register will mark rejected such tracts as he has rejected on the lists.

8. When the canals or reservoirs required by the plan of irrigation cross public land not selected by the State, an application for right of way over such lands under sections 18 to 21, Act of March 3, 1891 (26 Stat., 1085), should be filed separately, in accordance with the regulations under said Act.

9. In the preceding paragraphs instructions are given for the designation of the lands by the proper State authorities. Upon the approval of the map of the lands and the plan of irrigation, the contract is executed by the Secretary of the Interior and approved by the President, as directed by the Act. Upon the approval of the map and plan, the lands are reserved for the purposes of the Act, said reservation dating from the date of the filing of the map and plan in the local land office. A duplicate of the approved map and plan, and of the list of lands, is transmitted for the files of the local land office, and a triplicate copy of the list is forwarded to the State authorities.

10. When patents are desired for any lands that have been segregated, the State should file in the local land office a list, to which is prefixed a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law (Form 6, page 14); and followed by an affidavit of the State engineer, or other State officer whose duty it may be to superintend the reclamation of the lands (Form 7, page 15).

11. The certificate of Form 6 is required in order to show that the State laws accepting the grant of the lands have been duly complied with.

12. The affidavit of Form 7 is required in order to show compliance with the provisions of the law, that an ample supply of water

has been actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, for each tract in the list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the State engineer must be furnished, giving all the facts as to the water supply and the nature, location, and completion of the irrigation works.

If there are some high points which it is not practicable to irrigate, the nature, extent, location, and area of such points should be fully stated. If no part of a legal subdivision is susceptible of irrigation, such legal subdivision must be relinquished. Lands upon which valuable deposits of coal or other minerals are discovered will not be patented to the State under these Acts.

13. These lists will be called "lists for patent," and should be numbered by the State consecutively, beginning with No. 1. The list should also show, opposite each tract, the number of the approved segregation list in which it appears. The aggregate area should be stated at the foot of each page and at the end of the list.

14. Upon the filing of such list the local officers will place thereon the date of filing and note on the records opposite each tract listed: "List for patent serial No.——, filed — — —," giving the date.

15. When said list is filed in the local land office there shall also be filed by the State a notice, in duplicate, prepared for the signature of the register and receiver, describing the land by sections, and portions of sections, where less than a section is designated (Form 8, p. 15). This notice shall be published at the expense of the State once a week in each of nine consecutive weeks, in a newspaper of established character and general circulation, to be designated by the Register as published nearest the land. One copy of said notice shall be posted in a conspicuous place in the local office for at least sixty days during the period of publication.

16. At the expiration of the period of publication the State shall file in the local office proof of said publication and of payment for the same. Thereupon the Register and Receiver shall forward the list for patent to the General Land Office, noting thereon any protests or contests which may have been filed, transmitting such papers, and submitting any recommendations they may deem proper. They will also forward proofs of publication, of payment therefor, and of the posting of the list in their office.

17. Before patents are issued for lands within the former Southern Ute and the Ute Indian Reservations in Colorado, the State will be required to pay the price (\$1.25 per acre) fixed by the Acts of March 1, 1907, and February 24, 1909. The State will be advised of the number of acres which will be included in the patent and payment shall be made to the Receiver of the proper land office, who will issue a receipt as in other cases. The money will be accounted for in the same manner as other moneys received from the disposal of such lands.

18. Upon the receipt of the papers in the General Land Office such action will be taken in each case as the showing may require, and all tracts that are free from valid protest or contest, and respecting which the law and regulations have been complied with,



will be certified to the Secretary of the Interior for approval and patenting.

Fred Dennett,  
Commissioner, General Land Office.

Approved April 9, 1909.

R. A. Ballinger,  
Secretary of the Interior.

FORM 1.

State of \_\_\_\_\_,

County of \_\_\_\_\_, ss:

\_\_\_\_\_, being duly sworn, says he is the engineer under whose supervision the survey and plan hereon were made (or is the person employed to make, etc.); that the tracts shown hereon to be selected are each and every one desert land as contemplated by the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434); and the Act of March 3, 1901 (31 Stat., 1133-1188);\* that he is well acquainted with the character of the land herein applied for, having personally examined same; that there is not to his knowledge within the limits thereof any vein or lode or quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that the land is not occupied by any settler; that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary crops; and that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes.

\_\_\_\_\_,  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19—.

[Seal.]

\_\_\_\_\_,  
Notary Public.

FORM 2.

State of \_\_\_\_\_,

County of \_\_\_\_\_, ss:

\_\_\_\_\_, being duly sworn, says that he is the \_\_\_\_\_ (designation of office) authorized by the State of \_\_\_\_\_ to make desert-land selections under the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188);\* that the plan of irrigation and survey herewith is submitted under authority of the State of \_\_\_\_\_; and that the tracts shown hereon to be selected are each and every one desert land, as contemplated by the said Act of Congress, none being of the classes designated as timber or mineral lands.

\_\_\_\_\_,  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19—.

[Seal.]

\_\_\_\_\_,  
Notary Public.

\*The States of Idaho and Wyoming must insert here a reference to the Act of May 27, 1908 (35 Stat., 317-347).

The State of Colorado must insert here a reference to the Act of March 1, 1907 (34 Stat., 1057), when the lands are within the former Southern Ute Indian Reservation, and to the Act of February 24, 1909 (Public No. 255), when the lands are within the former Ute Indian Reservation.

A.

State of \_\_\_\_\_,  
United States Land Office,

\_\_\_\_\_, 19—.

\_\_\_\_\_, the duly authorized agent of the State of \_\_\_\_\_, under

and by virtue of an Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188),\* and in pursuance of the rules and regulations prescribed by the Secretary of the Interior, hereby makes and files the following list of desert public lands which the State is authorized to select under the provisions of the said Acts of Congress:

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FORM 3.

State of \_\_\_\_\_,  
County of \_\_\_\_\_, ss:

I, \_\_\_\_\_, being duly sworn depose and say that I am \_\_\_\_\_ (designation of office) authorized by the State of \_\_\_\_\_ to make desert-land selections under the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188);\* that the foregoing list of lands which I hereby select is a correct list of lands selected under said Acts; that the lands are vacant, unappropriated, are not interdicted timber nor mineral lands, and are desert lands as contemplated by the said Acts of Congress.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
[Seal.] \_\_\_\_\_,

Notary Public.

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FORM 4.

United States Land Office,  
\_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_, 19\_\_\_\_.

We hereby certify that we have carefully and critically examined the foregoing list of lands selected \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, the duly authorized agent of the State of \_\_\_\_\_, under the provisions of the Act of Congress approved August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188);\* that

\*See footnotes under Forms 1 and 2.

we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and that the same are not nor is any part thereof returned and denominated as mineral or timber lands; nor is there any homestead or other valid claim to any portion of said lands on file or of record in this office; and that the said lands are, to the best of our knowledge and belief, desert lands, as contemplated by the said Acts of Congress; and that the fees, amounting to \$\_\_\_\_\_, have been paid upon the said area of \_\_\_\_\_ acres.

\_\_\_\_\_, Register.  
\_\_\_\_\_, Receiver.

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FORM 5.

These articles of agreement, made and entered into this \_\_\_\_\_\* day of \_\_\_\_\_,\* A. D. 19\_\_\_\_,\* by and between \_\_\_\_\_,\* Secretary of the Interior, for and on behalf of the United States of America, party of the first part, and \_\_\_\_\_, for and on behalf of the State of \_\_\_\_\_, party of the second part, witnesseth:

That in consideration of the stipulations and agreements hereinafter made, and of the fact that said State has, under the provisions of section 4 of the Act of Congress approved August 18, 1894, of the Act of Congress approved June 11, 1896, and of the Act of Congress approved March 3, 1901,† through \_\_\_\_\_, its proper officer, thereunto duly authorized, presented its proper application for certain lands situated within said State and alleged to be desert in character and particularly described as follows, to wit: List No. \_\_\_\_\_ (here insert list of lands and total area), and has filed a map of said lands and exhibited a plan showing the mode by which it is proposed that said lands shall be irrigated and reclaimed and the source of the water to be used for



that purpose, the said party of the first part contracts and agrees, and, by and with the consent and approval of \_\_\_\_\_,\* President thereof, hereby binds the United States of America to donate, grant and patent to said State, or to its assigns, free from cost for survey or price,‡ any particular tract or tracts of said lands, whenever an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim the same, in accordance with the provisions of said Acts of Congress, and with the regulations issued thereunder, and with the terms of this contract, at any time within ten years from the date of the approval of the said map of the lands.

It is further understood that said State shall not lease any of said lands or use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement; and that in selling and disposing of them for that purpose the said State may sell or dispose of not more than 160 acres to any one person, and then only to bona fide settlers who are citizens of the United States or who have declared their intention to become such citizens; and it is distinctly understood and fully agreed that all persons acquiring title to said lands from said State prior to the issuance of patent, as hereinafter mentioned, will take the same subject to all the requirements of said Acts of Congress and to the terms of this contract, and shall show full compliance therewith before they shall have any claim against the United States for a patent to said lands.

It is further understood and agreed that said State shall have full power, right, and authority to enact such laws, and from time to time to make and enter into such contracts and agreements, and to create and assume such obligations in relation to and concerning said lands as may be necessary to induce and cause such irrigation and reclamation thereof as is required by this contract and the said Acts of Congress; but no such law, contract, or obligation shall in any way bind or obligate the United States to do or perform any act not clearly directed and set forth in this contract and said Acts of Congress, and then only after the requirements of said Acts and contract have been fully complied with.

Neither the approval of said application, map, and plan, nor the segregation of said land by the Secretary of the Interior, nor anything in this contract, or in the said Acts of Congress, shall be so construed as to give said State any interest whatever in any lands upon which, at the date of the filing of the map and plan hereinbefore referred to, there may be an actual settlement by a bona fide settler, qualified under the public land laws to acquire title thereto, or which are known to be valuable for their deposits of coal or other minerals.

It is further understood and agreed that as soon as an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of said lands the said State or its assigns may make proof thereof under and according to such rules and regulations as may be prescribed therefor by the Secretary of the Interior, and as soon as such proof shall have been examined and found to be satisfactory patents shall issue to said State, or to its assigns, for the tracts included in said proof.

The said State shall, out of the money arising from its disposal of said lands, first reimburse itself for any and all costs and expenditures incurred by it in irrigating and reclaiming said lands, or in assisting its assigns in so doing; and any surplus then remaining after the payment of the cost of such reclamation shall be held as a trust fund, to be applied to the reclamation of other desert lands within said State.

This contract is executed in duplicate, one copy of which shall be placed of record and remain on file with the Commissioner of the General Land Office, and the other shall be placed of record and remain on file with the proper officer of said State, and it shall be the duty of said State to cause a copy thereof, together with a copy of all rules and regulations issued thereunder or under said acts of Congress, to be spread upon the deed records of each of the counties in said State in which any of said lands shall be situated.

\*These blanks should be left vacant by the state agent.

‡The words "or price" must be eliminated before the contract is signed on behalf of the State of Colorado when the lands involved are within the former Southern Ute or Ute Indian reservations.

In testimony whereof the said parties have hereunto set their hands the day and year first herein written.

\_\_\_\_\_,  
Secretary of the Interior.  
State of \_\_\_\_\_.  
By \_\_\_\_\_.

#### APPROVAL.

To all to whom these presents shall come, greeting:

Know ye, that I, \_\_\_\_\_,\* President of the United States of America, do hereby approve and ratify the attached contract and agreement, made and entered into on the \_\_\_\_\_\* day of \_\_\_\_\_,\* 19—,\* by and between \_\_\_\_\_,\* Secretary of the Interior, for and on behalf of the United States, and \_\_\_\_\_, for and on behalf of the State of \_\_\_\_\_, under section 4 of the Act of Congress approved August 18, 1894, the Act approved June 11, 1896, and the Act approved March 3, 1901.†.

#### FORMS FOR VERIFICATION AND PUBLICATION OF LISTS FOR PATENT FORM 6.

I, \_\_\_\_\_, do hereby certify that I am the \_\_\_\_\_, (designation of office) of the State of \_\_\_\_\_; that I am charged with the duty of disposing of the lands granted to the State in pursuance of section 4, Act of August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and Act of March 3, 1901 (31 Stat., 1133-1188),† and that the laws of the said State relating to the said grant from the United States have been complied with in all respects as to the following list of lands, which is hereby submitted on behalf of the said State for the issuance of patent under said acts of Congress.

[Here add list of lands.] \_\_\_\_\_,

#### FORM 7.

To follow list of lands.

State of \_\_\_\_\_,

County of \_\_\_\_\_, ss:

\_\_\_\_\_, being duly sworn, deposes and says that he is the \_\_\_\_\_ (designation of office) of the State of \_\_\_\_\_, charged with the duty of supervising the reclamation of lands segregated under section 4, Act of August 18, 1894 (28 Stat., 372-422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133-1188),† that he has examined the lands designated on the foregoing list, and that an ample supply of water has been actually furnished (in a substantial ditch or canal, or by artesian wells or reservoirs) for each tract in said list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19—. [Seal.] \_\_\_\_\_,

Notary Public.

#### FORM 8.

Form for published notice.

United States Land Office,  
\_\_\_\_\_, 19—.

To whom it may concern:

Notice is hereby given that the State of \_\_\_\_\_ has filed in this office the following list of lands, to wit, \_\_\_\_\_, and has applied for a patent for said lands under the Acts of August 18, 1894 (28 Stat., 372-422), June 11, 1896 (29 Stat., 434), and March 3, 1901 (31 Stat., 1133-1188),† relating to the granting of not to exceed a million acres† of arid land to each of certain States; and

\*These blanks should be left vacant by the state agent.

†See footnotes under Forms 1 and 2.

‡In the cases of Idaho and Wyoming 2,000,000 acres.



that the said list, with its accompanying proofs, is open for the inspection of all persons interested, and the public generally.

Within the next sixty days following the date of this notice, protests or contests against the claim of the State to any tract described in the list, on the ground of failure to comply with the law, on the ground of the non-desert character of the land, on the ground of a prior adverse right, or on the ground that the same is more valuable for mineral than for agricultural purposes, will be received and noted for report to the General Land Office at Washington, D. C.

\_\_\_\_\_, Register.  
\_\_\_\_\_, Receiver.

## SELECTIONS UNDER CAREY ACT—WITHDRAWALS—ACT OF MARCH 15, 1910.

### Regulations.

Supplemental to regulations concerning the selection of desert lands by certain States and Territories, approved April 9, 1909 (37 L. D., 624).

By the Act of March 15, 1910 (Public No. 87), section four, Act of August 18, 1894 (28 Stat., 372, 422), commonly known as the Carey Act, was amended so as to authorize the Secretary of the Interior, under application of a beneficiary State or Territory, to temporarily withdraw from settlement or entry public lands of the United States, pending survey and investigation preliminary to the filing of application for the segregation of such lands under said Act of August 18, 1894.

The text of the Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to aid in carrying out the purposes of section four of the Act of August eighteenth, eighteen hundred and ninety-four, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending eighteen hundred and ninety-five, and for other purposes," it shall be lawful for the Secretary of the Interior, upon application by the proper officer of any State or Territory to which said section applies, to withdraw temporarily from settlement or entry areas embracing lands for which the State or Territory proposes to make application under said section, pending the investigation and survey preliminary to the filing of the maps and plats and application for segregation by the State or Territory: Provided, That if the State or Territory shall not present its application for segregation and maps and plats within one year after such temporary withdrawal the lands so withdrawn shall be restored to entry as though such withdrawal had not been made.

Approved March 15, 1910.

1. Under the provisions of this Amendatory Act, public lands of the United States may be temporarily withdrawn upon proper application by a beneficiary State or Territory that proper surveys may be prepared and investigation made preliminary to the filing of application by such State or Territory, for the segregation of such lands under the Carey Act.

If such application is not filed within one year from the date of withdrawal, the lands so withdrawn will, as directed by the Act, be immediately restored to entry.

No provision is made for the extension of such a temporary withdrawal.

2. To obtain the benefits of this amendatory Act, the State or Territory, through its proper official, will be required to file in the local land office in the land district within which the lands sought to be withdrawn lie, an application therefor (see appended Form B) which shall set forth the name of the individual or corporation proposing to reclaim the lands; that all the forms and conditions imposed by the State law upon such proposer, prior to segregation, have been complied with; that, from the showing made by the proposer (or state other source of information), it is believed that sufficient water to irrigate the whole of the lands asked to be withdrawn, over and above prior appropriations, is available, and that the proposer has either acquired title to such water, or applied for the same, and that the lands are desert in character.

Appended to the application should be a list of the lands asked to be withdrawn; if the lands are unsurveyed, the fact should be set forth, together

with a statement that an application for the survey thereof has been filed in the office of the surveyor-general.

3. Accompanying such application should be filed an affidavit (see appended Form C), based upon personal examination, that the lands sought to be withdrawn are desert in character, as contemplated by the Carey Act, and are nonmineral.

This affidavit should be made either by the proposer, his or its engineer, or by the State or Territorial engineer, or one of his assistants.

4. Where the lands sought to be withdrawn are situated in more than one land district, a list must be filed in each district, describing the lands in that district.

5. Upon the filing of such application, the register will at once note the same upon his records and will thereafter reject all applications to enter, purchase or select any such lands, excepting when settlement or application to enter, purchase or select prior to the date of filing of the State's application is alleged, or disclosed of record; he will then at once transmit the application to this office for further action, first noting thereon the date of filing, over his written signature.

6. Within three months after date of filing the application for withdrawal in the local office, the State must file a corroborated affidavit by the proposer, his or its engineer, or the State engineer, that the work of surveying and laying out the proposed irrigation system has been actually commenced in the field and is being energetically prosecuted; this affidavit should show the work accomplished and the result.

In default of such showing by the State, the withdrawal will be promptly revoked.

7. In the event that any of the tracts withdrawn are found to be above the proposed irrigation works, or for any other reason not susceptible to irrigation, the fact and description of the non-reclaimable land by smallest legal subdivisions should be at once communicated to this office, that they may be relieved from the withdrawal.

8. If at any time after withdrawal it is shown that the State is not energetically prosecuting the investigation and survey of the lands, that the same are not reclaimable by the proposed system of reclamation, are not desert in character, or for any other reason are not subject to the provisions of the Carey Act, or that the proposer is not proceeding in good faith, the withdrawal will be at once revoked.

9. The one year mentioned in the Act as the period of withdrawal will commence to run from the date of the filing of the application for withdrawal in the local land office.

#### FORM B.

State of .....,  
United States Land Office,  
....., 19..

....., the duly authorized agent of the State of ....., under and by virtue of an Act of Congress approved August 18, 1894 (28 Stat., 372, 422), and the acts amendatory thereof, and in pursuance of the rules and regulations prescribed by the Secretary of the Interior, hereby makes and files the following list of desert public lands, which the State is authorized to select under the provisions of the said Act of Congress, as an application for the temporary withdrawal of such lands under the provisions of the amendatory Act of March 15, 1910 (Public No. 87), preliminary to the survey and investigation thereof, with a view to their selection under said Act of August 18, 1894, and I hereby certify that this application is made at the instance of ..... who (which) has filed with the State Land Board (or other proper official or body) a proposition to reclaim such of the lands in said list as may be found susceptible of irrigation and reclamation; that said proposer has complied with all the forms and condition imposed by the laws of the State ....., upon such proposer prior to segregation; that from the showing made by him (or it), and from other data at my command, I verily believe that sufficient water to irrigate the whole of the lands withdrawn, over and above prior appropriations, is available and that the proposer has acquired title to such water (or applied for or appropriated such water, as the case may be), and that the lands are desert in character (if the lands are unsurveyed, state the fact), and that application for the survey thereof has been made by the State to the surveyor-general.



## FORM C.

State of ....., County of ....., ss.

....., being duly sworn, says that he is the State (or Territorial) engineer of the State (or Territory) of ..... (if the affidavit is made by any one other than the State engineer he should be so described as to identify him with the State or the project); that the tracts described in the accompanying application under the amendatory Act of March 15, 1910 (Public No. 87), the temporary withdrawal of which is asked, pending survey and investigation preliminary to the inclusion thereof in State Segregation List No. ...., are each and every one desert land as contemplated by the Act of Congress approved August 18, 1894 (28 Stat., 372, 422), the Act of June 11, 1896 (29 Stat., 434), and the Act of March 3, 1901 (31 Stat., 1133, 1188); that he is well acquainted with the character of the land herein applied for, having personally examined same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, tin, lead or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor any other deposit of valuable mineral; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons, and that said land is essentially nonmineral land.

Sworn to before me this ..... day of ....., 19..

Approved April 25, 1910:

R. A. Ballinger,  
Secretary.

.....,  
Notary Public.

Certificate expires .....

## **EXTENSION OF TIME FOR RECLAMATION PROJECTS UNDER CAREY ACT.**

### **Instructions.**

Instructions governing the extension of time for irrigation and reclamation plants, under Sec. 4, of the Act of August 18, 1894, as amended by Sec. 3 of the Act of March 3, 1901.

Secretary Ballinger to the Commissioner of the General Land Office, May 13, 1909:

Referring to that portion of the Act of Congress, above cited (31 Stat., 1188), which authorizes the Secretary of the Interior in his discretion to continue segregation of lands for a period of not exceeding five years, or to restore them to the public domain, where a State has failed to reclaim lands segregated under the Carey Act within the period of ten years, prescribed by law, you are advised that all such applications must be submitted to me with your report and recommendation, and applications for extension of time will only be entertained upon a showing of the happening of some event preventing completion of the reclamation which could not have been reasonably anticipated or guarded against, such as:

1. Destruction of dams, reservoirs, canals, ditches, or other works constructed, or partly constructed, by storms, floods, or other unavoidable casualties.
2. Inability to complete construction of reservoirs, ditches, canals, etc., within ten years because of unforeseen structural or physical difficulties encountered, in cases where construction was promptly begun and diligently prosecuted.
3. Error or misjudgment in surveying and locating ditches, canals, etc., necessitating new surveys and construction in order to effect proper and permanent reclamation.
4. Financial failures on the part of the contractor under the State, which delayed or prevented reclamation and which could not have been foreseen or reasonably anticipated.
5. Other reasons not above specified but falling within the general scope of these instructions will be considered if presented; but in all cases showing made must be by or through the proper State authorities and clearly and specifically set forth all the facts and reasons which prevented the completion of the contract or reclamation of the land within the ten-year period.

### **CAREY ACT LEGISLATION, 1911.**

6. One million acres additional in Nevada subject to State selections under Carey Act.

An additional one million acres of arid lands within the State of Nevada is hereby made available and subject to the terms of section four of an Act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes." Approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and the State of Nevada is allowed under the provisions of said Acts said additional area, or so much thereof as may be necessary for the purposes and under the provisions of said Acts.

(Part of Public No. 525, approved March 4, 1911.)

#### WYOMING.

7. Carey Act, allowing State selections, extending to land in former military reservation in Wyoming.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the provisions of section four of the Act of August, eighteen hundred and ninety-four, and Acts amendatory thereto, be, and the same are hereby, made applicable to the lands in the former Fort Bridger Military Reservation in Uinta County, Wyoming.

(Public No. 381, approved February 16, 1911.)

#### IDAHO.

8. (No. 28.) Joint resolution providing for additional lands for Idaho under the provisions of the Carey Act.

Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, That an additional one million acres of arid lands within the State of Idaho be made available and subject to the terms of section four of an Act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and that the State of Idaho be allowed, under the provisions of said Acts, said additional area, or so much thereof as may be necessary for the purposes and under the provisions of said Acts.

Approved May 25, 1908. Sixtieth Congress, 1907-1908.

See "Idaho under Carey Act."

### DESERTED WIVES—MARRIED WOMEN.

(See Three-Year Homestead Law.)

1. A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

- (a) Where she has been actually deserted by her husband.
- (b) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.
- (c) Where the husband is confined in a penitentiary and she is actually the head of the family.
- (d) Where the married woman is the heir of a settler or contestant who dies before making entry.

(e) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time she applies to make entry.

2. If an entryman deserts his wife and abandons the land covered by his entry, his wife then has the exclusive right to contest the entry if she has continued to reside on the land, and on securing its cancellation she may enter the land in her own right, or she may continue her residence, and make proof in the name of and as the agent for her husband, and patent will issue to him.

3. If an entryman deserts his minor children and abandons his entry after the death of his wife, the children have the same right



to make proof on the entry as the wife could have exercised had she been deserted during her lifetime.

4. The marriage of the entrywoman after making entry will not defeat her right to acquire title if she continues to reside upon the land and otherwise comply with the law. A husband and wife can not, however, maintain separate residences on homestead entries held by each of them, and if, at the time of marriage, they are each holding an unperfected entry on which they must reside in order to acquire title, they can not hold both entries. In such case they may elect which entry they will retain and relinquish the other.

5. A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

(a) A married woman, not the head of a family, is not qualified under the provisions of Sec. 2 of the Act of June 5, 1872, to make entry of lands in the Bitter Root Valley opened to settlement by said Act.

See case of Matilda C. Humble (34 L. D., 313).

6. The husband who has deserted the wife can not defeat the rights of the wife to the land, providing she is in possession of and occupying the same at the time of the filing of relinquishment in the land office for the district in which the land is situated. The doctrine that the relinquishment can not defeat the rights of one in possession of land embraced in an uncontested entry is well settled. "Relinquishment opens the land to settlement at once; and the right of a settler then on the land is superior to that of one who makes entry immediately after the relinquishment." A discussion of this question will be found under title "Relinquishments." It is mentioned here to show that aside from the rights of a married woman who has been deserted by the husband, she would be entitled to the benefit of the rule as applied to other persons in possession of lands at the time of filing a relinquishment. Citation of authority will be found in the title "Relinquishments."

7. Where a wife has been divorced from her husband or deserted so that she is dependent upon her own resources for support, she may make homestead entry as the head of a family or as a femme sole.

The Department will determine the question of desertion irrespective of the judgment of any court as to such fact.

8. "Where a married woman makes an application for homestead entry as a deserted wife, and subsequently procures a divorce on the ground of desertion and entry upon her application is afterwards allowed, in a contest against such entry on the ground of fraud and collusion, the Department is not bound by the finding of fact made by the court in the divorce proceeding, but may determine from the proof whether or not she was a deserted wife at the time of her application."

See *Jacoby v. Kubal* (31 L. D., 382).

9. "Separation of a husband and wife by mutual consent does not constitute the wife the head of a family within the meaning of Sec. 2289 of the Revised Statutes, or authorize her to make a homestead entry as the deserted wife."

See *Roberts v. Seymour* (36 L. D., 258).

10. The right to make a homestead entry is conferred upon every person who is the head of a family or who has arrived at the age of twenty-one years and who is a citizen of the United States or who has filed his declaration of intention to become such."

11. "The right of a deserted wife to make entry rests in the statutory privilege accorded to the 'head of a family'; but the fact of desertion must be affirmatively shown before the right of entry accrues."

See *Porter v. Maxfield* (5 L. D., 42); *Giblin v. Moeller's Heirs* (6 L. D., 296); *Brown v. Neville* (14 L. D., 459).

## RESIDENCE.

(See Commutation Proof.)

12. "The legal residence of the wife is presumed to be that of her husband and where both husband and wife at the time of marriage have an unperfected homestead entry, they can not thereafter maintain separate residence upon and perfect both entries; but where at the time of marriage the wife only has an unperfected homestead entry and thereafter continues to reside thereon and otherwise comply with the law, she is entitled to perfect the entry notwithstanding her husband in the meantime is maintaining a separate residence upon his own patented homestead entry to which he had perfected title prior to their marriage." The case of *Patrick Flynn*, 39 L. D., 593, citing with approval the case of *Jane Mann*, 18 L. D., 116, and *Anderson v. Hillerud*, 33 L. D., 335.

13. Where two persons hold homestead entries and intermarry before the submission of final proof upon one or the other of the entries, patent could not be obtained in both cases because of the necessity of maintaining two separate residences. The usual practice, or perhaps it would be better to say custom, prevailing is for one or the other of the parties contemplating marriage to submit a legal final proof upon one of the entries, which would obviate the necessity of maintaining two residences after marriage. Residence might be continued upon the unperfected entry and patent would issue upon the submission of proper final proof on the same.

14. In 1900 Congress passed an Act which was approved June 6, 1900, and which is embodied in 31 Statute, 683, and will be found on page —. This Act amended the Act of May 14, 1880, "An Act for the Relief of Settlers on the Public Lands." By this Act it is provided:

"Where a married woman who has heretofore settled or may hereafter settle upon a tract of public land, improve, establish and maintain a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, and has married, or shall hereafter marry, before making entry of said land, or before making application to enter said land, she shall not, on account of such marriage, forfeit her right to make entry and receive patent for the land: Provided, That she does not abandon her residence on said land, and is otherwise qualified to make homestead entry: Provided further, That the man whom she married is not, at the time of their marriage, claiming a separate tract of land under the homestead law."

"That this Act shall be applicable to all unpatented lands claimed by such entrywoman at the date of passage."

(See case *Margart J. Dingman*, 39 L. D., 363.)

(Also 30 L. D., 313.)

15. A married woman has the right to make desert land entry, timber and stone entry, the purchase of isolated tracts, and the



acquirement of lands under the mineral public land laws irrespective of her marriage. See Desert land, timber and stone entry, and isolated tracts. There are some exceptions in States which do not permit of women holding real estate as femme sole.

A married woman who makes homestead and marries is not estopped from making additional entry under the Enlarged Homestead Act. 39 L. D., 164.

"Under the provisions of the homestead law which confers upon the widow of a deceased entryman the right to complete the entry, the wife of an entryman sentenced to the penitentiary for life is entitled to perfect the entry in like manner as if the entryman were actually dead."

## **STATUTES AND REGULATIONS GOVERNING ENTRIES AND PROOFS UNDER THE DESERT-LAND LAWS.**

1. Laws governing making of desert-land entries, assignments, and proofs.
2. States and Territories in which desert-land entries may be made.
3. Lands that may be entered as desert land.
4. Who may make a desert-land entry.
5. Quantity of land that may be entered.
6. Land must be in compact form.
7. How preference right may be acquired on unsurveyed land.
8. How to proceed to make a desert-land entry.
9. Personal knowledge of the land by the entryman required.
10. Place of actual residence of applicants and witnesses must be given.
11. What officers to take acknowledgments.
12. Acquiring of water right.
13. Filing of map of irrigation.
14. Assignments.
15. Qualifications for taking land by assignment.
16. Recording of deed of assignment.
17. Annual proof.
18. Expenditures.
19. Time for submitting annual proof.
20. Final proof.
21. Notice, publication of.
22. Submission of proof.
23. Irrigation, cultivation, and water rights.
24. Amount of land which must be irrigated.
25. Actual tillage must be shown.
26. Proof of compliance with law in regard to water right must be shown.
27. Modification of rule with regard to water right proof.
28. Notice that final proof is due.
29. Extension of time in submitting proof under certain conditions.
30. Payments—Fees.
31. Fees required.
32. Contests.
33. Relinquishments.
34. Desert-land entries within reclamation project.
35. Persons to whom above act applies.
36. Application for excuse from compliance with desert-land laws.
37. Report of engineer in charge of reclamation project upon application.
38. Delay in making annual proof.
39. Delay and hindrance in making final proof.
40. Excuse from making final proof.
41. Abandonment, date of; restoration.
42. Entryman not compelled to accept the conditions of Act of June 17, 1902.
43. Relinquishment of all lands in excess of 160 acres.
44. All previous rulings and instructions not in harmony herewith are hereby vacated.

### **STATUTES.**

- A. Sale of desert lands in certain States and Territories.
- B. Three hundred and twenty acre limitation.

- C. An Act to repeal timber-culture laws, and for other purposes.
  - D. Sec. 2294, United States Revised Statutes, as amended by Act of March 4, 1904 (33 Stat., 59).
  - E. An Act providing for the subdivision of lands entered under the reclamation Act, and for other purposes.
  - F. An Act providing for second desert-land entries.
  - G. An Act limiting and restricting the right of entry and assignment under the desert-land law and authorizing an extension of time within which to make final proof.
  - H. An Act for the protection of the surface rights of entrymen.
  - I. An Act to provide for agricultural entries on coal lands.
  - J. An Act for the relief of assignees in good faith of desert lands in Imperial County, California.
- Extension of time for submitting final proof on desert-land entries.  
Desert entries in Weld and Larimer Counties, Colorado, extension of time.

**GENERAL LAND OFFICE—STATUTES AND REGULATIONS  
GOVERNING ENTRIES AND PROOF UNDER THE DESERT-  
LAND LAWS, TOGETHER WITH SUGGESTIONS TO PER-  
SONS DESIRING TO MAKE ENTRIES UNDER SAID LAWS.  
APPROVED SEPTEMBER 30, 1910.**

Department of the Interior,  
General Land Office,

Washington, D. C., September 30, 1910.

1. The laws, or portions of laws, governing the making of desert-land entries, assignments thereof, and the proofs required, will be found printed in full at the end of this circular, and are as follows: Act of March 3, 1877 (19 Stat., 377); March 3, 1891 (26 Stat., 1095); August 30, 1891 (26 Stat., 391); June 27, 1906 (34 Stat., 519); March 26, 1908 (35 Stat., 48); March 28, 1908 (35 Stat., 52); March 4, 1904, amending section 2294, Revised Statutes of the United States (33 Stat., 59); June 22, 1910 (36 Stat., 583); March 3, 1909 (35 Stat., 844); June 25, 1910 (36 Stat., 867), and the Act of June 22, 1910 (36 Stat., 583).

**STATES AND TERRITORIES IN WHICH DESERT-LAND ENTRIES MAY  
BE MADE.**

2. The Act of March 3, 1877, provided for the making of desert-land entries in the States and Territories of California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, Arizona, and New Mexico. The Act of March 3, 1891, extended the provisions of the desert-land laws to Colorado.

**LANDS THAT MAY BE ENTERED AS DESERT LAND.**

3. Lands which, by reason of a lack of rainfall, or of sufficient dampness in the soil, will not produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, nor produce an agricultural crop of any kind in amount to make the cultivation thereof reasonably remunerative, and do not contain sufficient moisture to produce a natural growth of trees may be classed as desert in character and, if surveyed and unappropriated, may be entered under the desert-land law.

Lands situated within a notoriously arid or desert region, and themselves previously desert within the meaning of the desert-land law, do not necessarily lose their character as desert lands merely because on account of unusual rainfall for a few successive seasons their productiveness was increased and larger crops were raised thereon; and, under such circumstances, a strong preponderance of



evidence will be required to take them out of the class of desert lands. The final proof, however, of one who makes desert entry of such lands will be closely scrutinized as to the sufficiency of his water supply and the adequacy of his ditches and laterals. (37 L. D., 522.)

While lands which border upon streams, lakes, and other bodies of water, or through or upon which there is any stream, body of water, or living spring, may not produce agricultural crops without irrigation, such lands are not subject to entry under the desert-land laws until the clearest proof of their desert character is furnished.

#### WHO MAY MAKE A DESERT-LAND ENTRY.

4. Any citizen of the United States, 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can make the affidavit specified in paragraphs 8 and 9 of these regulations, can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications, can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

At the time of making final proof, however, entrymen of alien birth must have been admitted to full citizenship, which must be shown by a duly certified copy of the certificate of naturalization.

#### QUANTITY OF LAND THAT MAY BE ENTERED.

5. Under the Act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the Act of March 3, 1891, the area that may be embraced in a desert entry was reduced to 320 acres as the maximum. This limitation must, however, be read in connection with the Act of August 30, 1890 (26 Stats., 391), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, if otherwise qualified, may enter 160 acres of land under the desert-land laws. In other words, he may make a desert-land entry for such a quantity of land as, taken together with land acquired by him under the agricultural land laws, since August 30, 1890, and claimed by him under such laws, does not exceed 320 acres in the aggregate. It is to be noted, also, that the Act of June 22, 1910 (Public, No. 227), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area.

A person's right of entry under the desert-land law is exhausted either by making an entry or by taking an assignment of an entry, in whole or in part, whether the maximum quantity of land, or less, is entered or received by assignment; except, however, that under the Act of March 26, 1908, if a person, prior to the passage of that Act, has made an entry and has abandoned, lost, or forfeited the same, or has relinquished without receiving a valuable consideration

therefor, such person may make a second entry. In such case, however, it must be shown when the former entry was abandoned, lost, or forfeited, that it was not assigned, in whole or in part, canceled for fraud, or relinquished for a valuable consideration, and it must be so described by section, township, and range, or by date and number, as to be readily identified on the records of the General Land Office. The showing required must be by affidavit of applicant wherein the facts upon which is based his claim of right to make a second desert-land entry are set forth fully and in detail. This affidavit must be corroborated, as far as possible, by the affidavit of one or more persons having personal knowledge of the facts stated by applicant. Registers and Receivers are authorized to allow a second desert-land entry in any case wherein it is shown that applicant is entitled to make such entry under the provisions of said Act of March 26, 1908. Otherwise the application will be noted on the district office records and forwarded to the General Land Office with appropriate recommendation.

#### LAND MUST BE IN COMPACT FORM.

6. Land entered under these laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable on account of the previous appropriation of adjoining lands, or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered, and the surrounding tracts, should be stated, in order that the General Land Office may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entry-men should make a complete showing in this regard, and should state the facts and not the conclusions they derive from the facts, as it is the province of the Land Department of the Government to determine whether or not, from the facts stated, the entry should be allowed.

#### HOW PREFERENCE RIGHT MAY BE ACQUIRED ON UNSURVEYED LAND.

7. Prior to the Act of March 28, 1908, a desert-land entry could embrace unsurveyed lands, but since the date of that Act desert-land entries may not be made of unsurveyed lands. This Act provides, however, that if a duly qualified person shall go upon a tract of unsurveyed desert land and reclaim, or commence to reclaim, the same, he shall be allowed a preference right of ninety days after the filing of the plat of survey in the local land office to make entry of the land. To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim, or posting notices thereof on the land claimed, would not secure the preference right as against an adverse claimant, but occupation in entire good faith, accompanied by acts and works looking to the ultimate reclamation of the land, are necessary and required.



## HOW TO PROCEED TO MAKE A DESERT-LAND ENTRY.

8. A person who desires to make entry under the desert-land laws must file with the Register and Receiver of the proper land office a declaration, or application, under oath, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is also a bona fide resident of the State or Territory in which the land sought to be entered is located. He must also state that he has not previously exercised the right of entry under the desert-land laws by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural-land laws, to lands which, together with the land applied for, will exceed, in the aggregate, 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon, within four years from the date of his application. This declaration must contain a description of the land, by legal subdivisions, section, township, and range.

9. Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The affidavit, which is made a part of the application, may not be made by an agent or upon information and belief, and the Register and Receiver must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge and that it was obtained from a personal examination of the lands. The blank spaces in the application must be filled in with a complete statement of the facts, showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the affidavits of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

The statements in the blank form of declaration and accompanying affidavits, as to present character of the land, may be modified so as to show the facts, in any case wherein application is made for entry of lands reclaimed, or partially reclaimed, by applicant, before survey, under the provisions of the Act of March 28, 1908; as to a former entry, in case application is made for a second entry under the provisions of the Act of March 26, 1908, and as to the character of the land, with respect to coal deposits in case application is made, under the provisions of the Act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal.

10. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also, and where the residence is in a city, the street and number must be given. It is especially important to claimants that upon changing their postoffice addresses they promptly notify the local officers of such change, for upon failure to do so their entries may be canceled upon notice sent to the address of record, but not received by claimant. The Register and Receiver will be careful to note the postoffice address on their records.

11. The application and corroborating affidavits, and all other proofs, affidavits, and oaths of any kind whatsoever, required by law to be made by applicants and entrymen and their corroborating witnesses, must be sworn to before the Register or Receiver of the land district in which the land is located, or before a United States commissioner, if the lands are within the boundaries of a State, or a commissioner of a court exercising federal jurisdiction, if in a Territory, or before a judge or clerk of a court of record, in the county, or land district, in which the land is situated. The only conditions permitting the taking of such evidence outside the proper land district is where the county in which the land is situated lies partly in two or more land districts, in which case such evidence may be taken anywhere in the county. In case the application and affidavits are not made before either of the local officers, or in the county in which the land is located, they must be made before some one of the officers above named, in the land district nearest to, or most accessible from, the land, which latter fact must be shown by affidavit of applicant. The declaration of applicant and the affidavits of his two witnesses must, in every instance, be made at the same time and place and before the same officer.

12. Persons who make desert-land entries must acquire a clear right to the use of sufficient water to irrigate and reclaim the whole of the land entered, or as much of it as is susceptible of irrigation, and of keeping it permanently irrigated. Therefore, if a person makes an entry before he has taken steps to acquire a water right, he does so at his own risk, because, ordinarily, one entry will exhaust his right and he will not be repaid the money paid at the time of making the entry.

13. At the time of filing his application with the Register and Receiver the applicant should also file a map, showing the plan by which he proposes to conduct water upon the land and the manner by which he intends to irrigate the same, and at the same time he must pay the Receiver the sum of 25 cents per acre for the land applied for. The Receiver will issue a receipt for the money, and the Register and Receiver will jointly issue a certificate showing the allowance of the entry. This application will be given its proper serial number at the time it is filed, and at the end of each month an abstract of collections under these laws will be transmitted to the General Land Office.

#### ASSIGNMENTS.

14. While by the Act of March 3, 1891, assignments of desert-land entries were recognized, the Land Department, largely for administrative purposes, held that a desert-land entry might be assigned as a whole, or in its entirety, but refused to recognize the assignment of only a portion of an entry. The Act of March 28, 1908, however, provides for the assignment of such entries, in whole or in part; but this does not mean that less than a legal subdivision may be assigned. Therefore, no assignment, otherwise than by legal subdivisions, will be recognized.

15. The Act of March 28, 1908, also provides that no person may take a desert-land entry by assignment, unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not a resident citizen of the State or Territory wherein the land involved



is located, or, if he has made a desert-land entry in his own right, he can not take such an entry by assignment. The language of the Act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment. The desert-land right is exhausted either by making an entry or by taking one by assignment.

However, in view of the practice that obtained in the General Land Office prior to March 28, 1908, of recognizing the right of a person to make an entry, and also to take one or more entries by assignment, the aggregate area of the land embraced in all such entries not exceeding 320 acres, such entries and assignments so made or taken will not now be disturbed. But all assignments and entries made subsequent to the approval of the Act of March 28, 1908, must be governed by the terms of that Act, which is held to mean that the desert-land right is exhausted either by making an entry or by taking one by assignment. Said Act provides that no assignment to, or for the benefit of, any corporation or association shall be authorized or recognized.

16. As stated above, desert-land entries may be assigned, in whole or in part, and, as evidence of the assignment, there should be transmitted to the General Land Office the original deed of assignment, or a certified copy thereof. Where the deed of assignment is recorded, a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted. Attention is called to the fact that copies of deeds of assignment certified by notaries public or justices of the peace, or, indeed, any other officers than those who are qualified to take proofs and affidavits in desert-land cases, will not be accepted.

An assignee must file, with his deed of assignment, an affidavit (Form 4-274a) showing his qualifications to take the entry assigned to him. He must show what entries have been made by, or assigned to, him under the agricultural laws, and he must also show his qualifications as a citizen of the United States, that he is 21 years of age or over, and also that he is a resident citizen of the State or Territory in which the land assigned to him is situated. In short, the assignee must possess the qualifications necessary to enter the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D., 541; 33 L. D., 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provision of law authorizing the assignments of desert entries, in whole or in part, furnishes no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent, and to thereafter proceed with the submission of final proof in furtherance of such contract. The sale of the land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D., 459.) The assignor of a desert-land entry

may execute the assignment papers wherever he may be before any officer authorized to take acknowledgments, but the assignee must execute the affidavit (Form 4-274a), and all other required oaths and affidavits, before some one of the officers specified and in the manner set out in paragraph 11 of this circular.

No assignments of desert-land entries or parts of entries are conclusive until examined in the General Land Office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectually as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the General Land Office, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor.

#### ANNUAL PROOF.

17. In order to test the sincerity and good faith of the claimant under the desert-land laws, and to prevent the reservation or segregation of tracts of public land in the interest of persons having no intention of reclaiming the land, but rather, by payment of the initial sum of 25 cents per acre, hoping to gain the use of the land for a number of years, Congress in the Act of March 3, 1891, made the requirement that a map be filed at the initiation of the entry, showing the mode of contemplated irrigation and the proposed source of the water supply, and that there be expended yearly for three years from the date of the entry not less than \$1 for each acre of the tract entered, making a total of not less than \$3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. The said Act, however, authorizes the submission of final proof at an earlier date than four years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than \$3 per acre have been made. Proof of these expenditures must be made before some officer authorized to administer oaths in desert-land cases. (See par. 11 hereof.) This proof, which is known as yearly or annual proof, must be made by applicant, whose affidavit must be corroborated by affidavits of two reputable witnesses, all of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof.

18. Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land, for roads where they are necessary, for erecting stables, corrals, etc., for digging wells, where the water therefrom is to be used for irrigating the land, and for leveling and bordering land proposed to be irrigated will be accepted. Expenditures for fencing all or a portion of the claim may be accepted, in case it is clearly shown that the fence is necessary for the protection of a portion of the land being prepared for irrigation and cultivation or for the protection of canals, ditches, etc., thereon. Expenditures for surveying, for the purpose of ascertaining the levels



for canals, ditches, etc., and for the first breaking or clearing of the soil may be accepted.

Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work may not be computed in the cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for a pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

No expenditure for stock or interest in an irrigating company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a special agent, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the department. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount required in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof. A certificate of the Secretary, or other qualified officer of the company involved, must be furnished, showing the extent of actual water appropriation by the company, to what extent water had been previously disposed of, quantity of water carried under the stock or interest purchased by the desert claimant, and a statement showing the previous ownership of the shares of stock forming the basis of proffered proof, and a description of the land in connection with which such stock has been previously issued or used. Circumstances in connection with stock which has been previously made the basis of proof or annual expenditure will be carefully scrutinized and inquired into.

Registers and Receivers are instructed to carefully examine all annual proofs filed and are authorized to suspend same, with notice to claimants to cure defects within thirty days, or to reject, subject to the usual right of appeal to the Commissioner of the General Land Office. These proofs are to be forwarded with the regular monthly returns.

At the end of each year, if the required proof of actual expenditures has not been made, the Register and Receiver will send the entryman notice and allow him sixty days in which to submit such proof. If the proof is not furnished as required, the fact that notice was served upon the claimant should be reported to the General Land Office, with evidence of service, whereupon the entry will be canceled. Registers and Receivers should keep on hand a sufficient supply of blank forms used in notifying the entrymen that annual proofs are due, and they should send such notices whenever necessary, without waiting for instructions from the General Land Office.

19. Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the three years may be offered whenever the amount of \$3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

#### FINAL PROOF.

20. The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed four years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of \$3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been actually cultivated with irrigation, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with. The cultivation and irrigation of the one-eighth of the entire area may be had in a body on one legal subdivision or may be distributed over several subdivisions. When an entryman has reclaimed the land and is ready to make final proof, he should apply to the Register and Receiver for a notice of intention to make such proof. This notice must contain a complete description of the land and must describe the entry by giving the number thereof and the name of the entryman. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making the proof.

21. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the land (see 38, L. D., 131), and it must also be posted in a conspicuous place in the local land office for the same period of time. The date fixed for the taking of the proof must be at least thirty days after the date of first publication. Proof of the publication must be made by the affidavit of the publisher of the newspaper or by some one authorized to act for him. The Register will certify to the posting of the notice in the local office.

22. At the time and place mentioned in the notice, and before the officer named therein, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. This proof may be taken by any one of the officers named in paragraph 11 hereof. All claimants, however, are advised that, whenever possible, they should make proof before the Register or Receiver, because by doing so, they may, in many instances, avoid such delay as results from the practice whereby proofs submitted before officers other than the Register or Receiver are frequently suspended for investigation by a special agent.

The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and



apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the four years prescribed by law, or within the period of an extension granted for submitting such proof, an affidavit should be filed by claimant, with the proof, explaining the cause of delay.

#### IRRIGATION, CULTIVATION, AND WATER RIGHTS.

23. The final proof must show specifically the source and volume of the water supply and how it was acquired and how maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvement of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw the land irrigated should be specifically stated.

24. While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L. D., 420.) Furthermore, the final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If there are any high points or any portions of the land, which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply, such subdivision must be relinquished.

25. As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass, or that grass sufficient to support stock has been produced on the land, as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay, of merchantable value, will be accepted as sufficient compliance with the requirements as to cultivation (32 L. D., 456). In such cases, however, the facts must be stated, and the extent and value of the crop of hay must be shown, and as before stated, that same was produced as a result of actual irrigation.

26. The final proof must also show that the claimant has made the preliminary filings and taken such other steps as are required

by the laws of the State or Territory in which the land is located, for the purpose of securing a right to the use of a sufficient supply of water to irrigate successfully all of the irrigable land embraced in his entry. It is a well-settled principle of law in all the States and Territories in which the desert-land acts are operative, that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use, within a reasonable time, constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule, result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end, the proof must at least show that water, which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State of Territorial laws governing the appropriation by individuals of the waters of public streams or other sources of supply, as shown by the record evidence of such right which accompanies the proof, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated and that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system and that he is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

27. In those States where entrymen have made applications for water rights and have been granted permits, but where no final adjudication of the water right can be secured from the State authorities, owing to delay in the adjudication of the water courses, or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where, under the local laws, it is absolutely impossible for the entryman to secure final title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished.

28. Where final proof is not made within the period of four years, or within the period for which an extension of time has been granted, the Register and Receiver should send the claimant a



notice, addressed to him at his post-office address of record, informing him that he will be allowed ninety days in which to submit final proof. Should no action be taken within the time allowed, the Register and Receiver will report that fact, together with evidence of service, to the General Land Office, whereupon the entry will be canceled.

#### EXTENSION OF TIME IN SUBMITTING PROOF UNDER CERTAIN CONDITIONS.

29. Under the provisions of the Act of March 28, 1908, the period of four years may be extended, in the discretion of the Commissioner of the General Land Office, for an additional period not exceeding three years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the four years. This does not mean that the period within which proof may be made will be extended as a matter of course for three years. The statute authorizes the Commissioner of the General Land Office to grant the extension, in his discretion, for such a period as he may deem necessary for the completion of the reclamation, not exceeding three years, but such applications for extension will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of four years was due to no fault on the part of the entryman, but to some unavoidable delay in the construction of the irrigation works, for which he was not responsible and could not have readily foreseen. Under no other condition is an extension of time to make final proof authorized, except in cases falling under section 5 of the Act of June 27, 1906, pertaining to the entry of land within the limits of reclamation projects.

An entryman who desires to make application for extension of time under the provisions of the Act of March 28, 1908, should file with the Register and Receiver an affidavit setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This affidavit should be executed before one of the officers named in paragraph 11 of this circular and must be corroborated by two witnesses who have personal knowledge of the facts, and the Register and Receiver, after carefully considering all of the facts, will forward the application to the General Land Office, with appropriate recommendation thereon. Inasmuch as Registers and Receivers reside in their respective districts, they are presumed to have more or less personal knowledge of the conditions existing therein, and for that reason much weight will be given their recommendations.

#### PAYMENTS—FEES.

30. At the time of making final proof the claimant must pay to the Receiver the sum of \$1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to \$1.25 per acre, which is the price to be paid for all lands entered under the desert-land law, regardless of their location. The Receiver will issue a receipt for the money paid, and, if the proof is satisfactory, the Register will issue a certificate in duplicate and deliver one copy

to the entryman and forward the other copy to the General Land Office at the end of the month during which the certificate was issued.

If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue, in like manner, to the heirs or devisees.

When final proof is made on an entry made prior to the Act of March 28, 1908, for unsurveyed land, if such proof is satisfactory, the Register and Receiver will approve the same and forward it to the General Land Office without collecting the final payment of \$1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor, if the proof is taken before the Register and Receiver. As soon as the land is surveyed they will call upon the entryman to make proof, in the form of an affidavit, duly corroborated, showing the legal subdivisions covered by his entry. When this has been done the Register and Receiver will, in the absence of conflict or other objection, correct their records so as to make them describe the land by legal subdivisions, and, if final proof has been made and found satisfactory and no other objections exist, final papers should be issued upon payment of the proper amount.

31. No fees or commissions are required of persons making entry under the desert-land laws, except such fees as are paid to the officers for taking the affidavits and proofs. The only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of \$1 an acre, to be paid at the time of making final proof. Where final proofs are made before the Register or Receiver in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming and Montana they will be entitled to receive, jointly, 22½ cents for each 100 words of testimony reduced to writing; in all other States they will be allowed 15 cents per 100 words for such service. The United States Commissioners, United States Court Commissioners, Judges, and Clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive \$1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

#### CONTESTS AND RELINQUISHMENTS.

32. Contests may be initiated against a desert-land entry for illegal inception, abandonment, or failure to comply with the law after entry. Successful contestants will be allowed a preference right of entry for thirty days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the Register will give the same notice and is entitled to the same fee for notice as in other cases. However, see, in this connection, the Act of June 25, 1910 (36 Stat., 867).

33. A desert-land entry may be relinquished at any time by the party owning the same, and when relinquishments are filed in the local land office the entries will be canceled by the Register and Receiver in the same manner as in homestead, preemption, and other



cases, under the first section of the Act of May 14, 1880 (21 Stat., 140).

#### DESERT-LAND ENTRIES WITHIN A RECLAMATION PROJECT.

34. By section 5 of the Act of June 27, 1905 (34 Stat., 519), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the reclamation Act of June 17, 1902, will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

35. This Act applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project or by any withdrawal of public lands under the reclamation act, from improving or reclaiming the lands covered by their entries.

36. No entryman will be excused under this Act from a compliance with all of the requirements of the desert-land law until he has filed in the local land office for the district in which his lands are situated an affidavit showing in detail all of the facts upon which he claims the right to be excused. This affidavit must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

37. The Register and Receiver will at once forward the application to the engineer in charge of the reclamation project under which the lands involved are located and request a report and recommendation thereon. Upon the receipt of this report the Register and Receiver will forward it, together with the applicant's affidavit and their recommendation, to the General Land Office, where it will receive appropriate consideration and be allowed or denied, as the circumstances may justify.

38. Inasmuch as entrymen are allowed one year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of this Act are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the Act, the applicant will file his affidavit explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

39. An entryman will not need to invoke the privileges of this Act in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation

and cultivation as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of a reclamation project, the affidavit explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

40. When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, as indicated herein, he will be excused, and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

41. If after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman will begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must comply with all the provisions of the Act of June 17, 1902, and must relinquish all the land embraced in his entry in excess of 160 acres, and upon making final proof and complying with the terms of payment prescribed in said Act of June 17, 1902, he shall be entitled to patent.

42. Special attention is called to the fact that nothing contained in the Act of June 27, 1906, shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation Act of June 17, 1902, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

43. Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish all of the lands embraced in their entries in excess of 160 acres whenever they are required to do so through the local land office and must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project.

44. All previous rulings and instructions not in harmony herewith are hereby vacated.

FRED DENNETT, Commissioner.

Approved.

FRANK PIERCE,  
Acting Secretary.

#### STATUTES.

(A) An Act to Provide for the Sale of Desert Lands in Certain States and Territories.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of twenty-five cents per acre—to file a declaration under oath with the register and the receiver of the land district in which



any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section,\* by conducting water upon the same, within the period of three years† thereafter: Provided, however, That the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands, and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him: Provided, That no person shall be permitted to enter more than one tract of land and not to exceed six hundred and forty acres, which shall be in compact form.

Sec. 2. That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavit shall be filed in the land office in which said tract of land may be situated.

Sec. 3. That this act shall only apply to and take effect in the States of California, Oregon, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the Commissioner of the General Land Office.

Approved, March 3, 1877 (19 Stat., 377).

\* Limited to 320 acres by Act of March 3, 1891 (26 Stat., 1095).

† Time extended to four years by Act of March 3, 1891, *supra*.

(B) Three Hundred and Twenty Acre Limitation.

Approved, August 30, 1890 (26 Stat., 391). See page 531.

(C) An Act to Repeal Timber-Culture Laws, and for Other Purposes.

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Sec. 2. That an Act to provide for the sale of desert lands in certain States and Territories, approved March third, eighteen hundred and seventy-seven, is hereby amended by adding thereto the following sections:

Sec. 4. That at the time of filing the declaration hereinbefore required the party shall also file a map of said land which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections or fractional parts of sections of desert lands may associate together in the construction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements.

Sec. 5. That no land shall be patented to any person under this Act unless he or his assignees shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least three dollars per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid, the party so entering shall expend not less than one dollar per acre for the purposes aforesaid; and he shall in like manner expend the sum of one dollar per acre during the second and also during the third year thereafter, until the full sum of three dollars per acre is so expended. Said party shall file during each year with the register, proof, by the affidavits of two or more credible witnesses, that the full sum of one dollar per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail

during any year to file the testimony aforesaid, the lands shall revert to the United States, and the twenty-five cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of three dollars per acre: Provided, That proof be further required of the cultivation of one-eighth of the land.

Sec. 6. That this Act shall not affect any valid rights heretofore accrued under said Act of March third, eighteen hundred and seventy-seven, but all bona fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said Act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this Act had not been passed; or said claims, at the option of the claimant, may be perfected and patented under the provisions of said Act, as amended by this Act, so far as applicable; and all acts and parts of acts in conflict with this Act are hereby repealed.

Sec. 7. That at any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold, by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands; but this section shall not apply to entries made or initiated prior to the approval of this act: Provided, however, That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding act shall be subject to contest, as provided by the law relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands and money paid therefor shall be forfeited to the United States.

Sec. 8. That the provisions of the Act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado, as well as the States named in the original act; and no person shall be entitled to make entry of desert land except he be a resident citizen of the State or Territory in which the land sought to be entered is located.

\* \* \* \* \*

Approved, March 3, 1891 (26 Stat., 1095).

(D) Sec. 2294, United States Revised Statutes, as Amended by Act of March 4, 1904 (33 Stat., 59).

Sec. 2294. That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising federal jurisdiction in the Territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated: Provided, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties



as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

"For each affidavit, twenty-five cents.

"For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

"For each deposition of claimant or witness, prepared by the officer, one dollar.

"Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars."

\* \* \* \* \*

(E) An Act Providing for the Subdivision of Lands Entered Under the Reclamation Act, and for Other Purposes.

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Sec. 5. That where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and the desert-land entryman has been or may be directly or indirectly hindered, delayed, or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry: Provided, That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert-land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been filed; but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry, the entryman shall thereupon comply with all the provisions of the aforesaid act of June seventeenth, nineteen hundred and two, and shall relinquish all land embraced within his desert-land entry in excess of one hundred and sixty acres, and as to such one hundred and sixty acres retained, he shall be entitled to make final proof and obtain patent upon compliance with the terms of payment prescribed in said act of June seventeenth, nineteen hundred and two, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said reclamation act.

Approved, June 27, 1906 (34 Stat., 520).

(F) An Act Providing for Second Desert-Land Entries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who prior to the passage of this Act has made entry under the desert-land laws, but from any cause has lost, forfeited, or abandoned the same, shall be entitled to the benefits of the desert-land law as though such former entry had not been made, and any person applying for a second desert-land entry under this Act shall furnish the description and date of his former entry: Provided, That the provisions of this Act shall not apply to any person whose former entry was assigned in whole or in part or canceled for fraud, or who relinquished the former entry for a valuable consideration.

Approved, March 26, 1908 (35 Stat., 48).

(G) An Act Limiting and Restricting the Right of Entry and Assignment Under the Desert-Land Law and Authorizing an Extension of Time Within Which to Make Final Proof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage

of this Act the right to make entry of desert lands under the provisions of the Act approved March third, eighteen hundred and seventy-seven, entitled "An Act to provide for the sale of desert lands in certain States and Territories" as amended by the Act approved March third, eighteen hundred and ninety-one, entitled "An Act to repeal timber-culture laws, and for other purposes," shall be restricted to surveyed public lands of the character contemplated by said Acts, and no such entries of unsurveyed lands shall be allowed or made of record: Provided, however, That any individual qualified to make entry of desert lands under said acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area three hundred and twenty acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public land surveys, within ninety days after the filing of the approved plat of survey in the district land office.

Sec. 2. That from and after the date of the passage of this Act no assignment of an entry made under said acts shall be allowed or recognized, except it be to an individual who is shown to be qualified to make entry under said acts of the land covered by the assigned entry, and such assignments may include all or part of an entry; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized.

Sec. 3. That any entryman under the above acts who shall show to the satisfaction of the Commissioner of the General Land Office that he has in good faith complied with the terms, requirements, and provisions of said acts, but that because of some unavoidable delay in the construction of the irrigating works, intended to convey water to the said lands, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said land, as required by said acts, shall, upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the Commissioner of the General Land Office, within which to furnish proof, as required by said acts, of the completion of said work.

Approved, March 28, 1908 (35 Stat., 52).

(H) An Act for the Protection of the Surface Rights of Entrymen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: Provided, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit: Provided further, That nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector, or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

Approved, March 3, 1909 (35 Stat., 844).

(I) An Act to Provide for Agricultural Entries on Coal Lands.

Act June 22, 1910 (36 Stat., 583). See page 486.

(J) An Act for the Relief of Assignees in Good Faith of Entries of Desert Lands in Imperial County, California.

Be it enacted by the Senate and House of Representatives of the United



States of America in Congress assembled, That any person, other than a corporation, who has in good faith heretofore acquired by assignment a desert-land entry, which entry is regular upon its face, in the belief that he was obtaining a valid title thereto, which assignment was accepted when filed at the local land office of the United States and recognized at the General Land Office as a proper transfer of such entry, shall be entitled to complete the entry so acquired, notwithstanding any contest that has been or may be filed against such entry, based upon a charge of fraud of which the assignee had no knowledge: Provided, however, That this Act shall only apply to any person who at the time of receiving such assignment was without notice of any fraud in the entry assigned or in any annual proof made concerning the same: Provided further, That patent shall not issue to any such assignee unless he shall affirmatively establish, by his evidence, under oath, good faith and lack of notice of fraud, and by the testimony, under oath, of himself and at least two witnesses that expenditure in the total amount and cultivation and reclamation to the full extent required by law have been actually made and accomplished: And provided further, That nothing herein contained shall be construed to waive or avoid liability for any fraud or violation of the law on the part of the person committing the same.

Sec. 2. That where a person having made entry under the desert-land law was thereafter permitted by the Land Department to hold another entry or entries by assignment, or where a person having previously perfected title under assignment of a desert-land entry, or having held land under assignment to the amount of three hundred and twenty acres or more at different times, was thereafter permitted by the Land Department to make an entry in his own right, or to hold other lands under assignment, such persons, or their lawful assignees, shall be, upon showing full compliance with all requirements of existing law as to expenditure, reclamation, and cultivation, permitted to complete title to the land now held by them, notwithstanding any contest that may have been or may hereafter be filed against the entry based upon the charge that the present claimant has exhausted his right under the desert-land law by reason of having previously made an entry or held land under an assignment as above detailed: Provided, however, That this section shall not be applicable to entries made or taken by assignment subsequently to November thirtieth, nineteen hundred and eight: Provided further, That no person shall be entitled to the benefits of either the first or second section of this Act who has heretofore acquired title to three hundred and twenty acres of land under the desert-land laws; nor shall this Act be construed to modify in any manner the provisions of the Act of August thirtieth, eighteen hundred and ninety (Twenty-sixth Statutes, three hundred and ninety-one), and the seventeenth section of the Act of March third, eighteen hundred and ninety-one (Twenty-sixth Statutes, ten hundred and ninety-five), restricting the quantity of lands that may be acquired under the agricultural-land laws.

Sec. 3. The provisions of this act shall apply to Imperial County, California, only.

Approved, June 25, 1910 (Sess. Law, 2d sess., 61st Cong., 867).

## **DESERT ENTRIES IN WELD AND LARIMER COUNTIES, COLORADO— EXTENSION OF TIME.**

### **Instructions.**

Department of the Interior,  
General Land Office,  
Washington, March 19, 1912.

Register and Receiver,  
Sterling, Denver, and Glenwood Springs, Colorado.

Sirs: Annexed is a copy of the Act of Congress approved January 16, 1912 (Public—No. 62), entitled "An Act authorizing the Secretary of the Interior to grant further extension of time within which to make proof on desert land entries in the counties of Weld and Larimer, Colorado."

1. All applications for the benefit of this Act must be supported by the affidavits of the applicants and at least two corroborating witnesses made before an officer legally authorized to administer oaths in connection with the entry in question and set forth the facts on account of which the further extension of time is desired.

2. Such applications and affidavits must be filed in the local land office of the district wherein the lands are situated for transmission, with the recom-

mentation of the register and receiver, to the Commissioner of the General Land Office.

3. You are directed to suspend any application that may be considered defective in form or substance, and allow the applicant an opportunity to remedy the defects or to file exceptions to the requirements made, advising him that upon his failure to take any action within a specified time, appropriate recommendations will be made. Should exceptions be filed, they will be duly considered with the entire record. In transmitting applications for the benefit of this act, you will report specifically whether or not there is any contest pending against the entry, and if a contest is pending, you will transmit the application to the Commissioner of the General Land Office by special letter without action thereon, making due reference to this paragraph.

Very respectfully,

S. V. Proudfit,  
Assistant Commissioner.

Approved:

Samuel Adams,  
First Assistant Secretary.

[Public—No. 62.]

An Act authorizing the Secretary of the Interior to grant further extension of time within which to make final proof on desert-land entries in the counties of Weld and Larimer, Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior may, in his discretion, grant to any entryman who has heretofore made entry under the desert-land laws in the counties of Weld and Larimer, in the State of Colorado, a further extension of the time within which he is required to make final proof: Provided, That such entryman shall, by his corroborated affidavit filed in the land office of the district where such land is located show to the satisfaction of the Secretary that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor; but such extension shall not be granted for a period of more than three years, and this Act shall not affect contests initiated for a valid existing reason.

Approved, January 26, 1912.

[Circular No. 116.]

**EXTENSION OF TIME FOR SUBMITTING FINAL PROOF ON DESERT-  
LAND ENTRIES—ACT OF APRIL 30, 1912 (PUBLIC NO. 143).**

Department of the Interior,  
General Land Office,  
Washington, May 21, 1912.

Registers and Receivers,  
United States Land Offices.

Sirs: Annexed is a copy of the Act of Congress approved April 30, 1912 (Public, No. 143), entitled "An Act authorizing the Secretary of the Interior to grant further extension of time within which to make proof on desert-land entries."

1. All applications for the benefit of this Act must be supported by the affidavits of the applicants and at least two corroborating witnesses, made before an officer legally authorized to administer oaths in connection with the entry in question, and set forth the facts on account of which the further extension of time is desired.

2. Such applications and affidavits must be filed in the local land office of the district wherein the lands are situated, for transmission, with the recommendation of the register and receiver, to the Commissioner of the General Land Office.

3. You are directed to suspend any application that may be considered defective in form or substance and allow the applicant an opportunity to remedy the defects or to file exceptions to the requirements made, advising him that, upon his failure to take any action within a specified time, appropriate recommendations will be made. Should exceptions be filed, they will be duly considered with the entire record. In transmitting applications for the benefit of this Act you will report specifically whether or not there is any contest pending against the entry involved, and if a contest is pending you



will transmit the application to the Commissioner of the General Land Office by special letter, without action thereon, making due reference to this paragraph.

Very respectfully,

Approved:

Samuel Adams,

First Assistant Secretary.

Fred Dennett,  
Commissioner.

[Public—No. 143.]

An Act authorizing the Secretary of the Interior to grant further extension of time within which to make proof on desert-land entries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior may, in his discretion, in addition to the extension authorized by existing law, grant to any entryman under the desert-land laws a further extension of the time within which he is required to make final proof: Provided, That such entryman shall, by his corroborated affidavit filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor; but such extension shall not be granted for a period of more than three years, and this act shall not affect contests initiated for a valid existing reason: Provided, That the total extension of the statutory period for making final proof that may be allowed in any one case under this act, and any other existing statutes of either general or local application, shall be limited to six years in the aggregate.

Approved, April 30, 1912.

## **SUSPENDED ENTRIES—RULES AND REGULATIONS— BOARD OF EQUITABLE ADJUDICATION.**

Under the Act of Congress, approved August 3, 1846, entitled "An Act providing for the adjustment of all suspended preemption land claims in the several States and Territories," the following general equitable rules and regulations were established for the government of the Commissioner of the General Land Office:

The Commissioner will recognize as valid and place in the first class, suspended entries of the following description:

1. All preemption entries in which one or more legal requirements do not appear in the papers because of the neglect or inattention of the land officers, but where the existing testimony shows a substantial and bona fide settlement and improvement of the lands; or where such facts were satisfactorily shown to the local officers by proof which was lost in transmission to the General Land Office and cannot now be renewed by reason of the death of witnesses or other cause.

2. All entries in virtue of "floats" under the Acts of 29th May, 1830, and 19th June, 1834, where the original settlement (from which the "Float" was derived) was bona fide and had been actually entered, but where such original settlement was on land reserved for private claims, the survey of which had not been returned by time of entry; and also all entries by such "floats" on land liable to sale, where the "float" entries had been made prior to the return of the official plat of survey for the original settlement.

3. All preemption entries under the Acts of 12th April, 1814, 29th May, 1830, and 19th June, 1834, 22nd June, 1838, and 1st June, 1840, which have been allowed in the name of assignees, instead of

the preemptors themselves, where the claim is bona fide, and the assignees or subsequent purchasers are in possession.

4. Entries allowed by preemption on "sketch maps" (obtained by the parties) before the return of the regular approved plat of the township embracing the land.

5. All entries allowed by preemption on land which was reserved at the date of the Preemption Act, but which was released from reservation before the expiration of said Act, where such entries are in other respects regular.

6. Preemption entries under laws requiring actual residence on public land, in which the residence was found to be on private property, but where the tract entered formed a substantial part of the farm of the claimant, and was improved and cultivated by him at the period required for residence.

7. Preemption entries of legal subdivisions of a fractional section which contain more than 160 acres, but which are as near to that quantity as the existing subdivisions will allow.

8. Preemption entries allowed under one preemption law, where it shall have been discovered that said entries are invalid under that Act, but where the settlement and improvement is of a character to have entitled the parties to a legal and valid claim under a subsequent law, provided the land is not embraced by the valid claim of another.

9. Preemption entries in the mineral region embracing the half of a quarter section reserved for mineral purposes where the half quarter so entered is shown not to have contained mineral, and also entries as "floats" allowed to the claimants, who, by reason of one portion of the quarter section on which they were settled containing mineral, were unable to enter more than the half of said quarter section, provided the claim is otherwise a bona fide one.

10. Preemption entries founded upon a bona fide right of preemption, where, as it respects the mode and manner of the entry, there is not a strict conformity with the law, but where such entry does not embrace a quantity exceeding that allowed by law, is in accordance with the wish of the party or parties interested and does not interfere with the rights or interests of another.

11. All private sales of tracts which have not been previously offered at public sale, but where the entry appears to have been permitted by land officers under the impression that the land was liable to private entry, and there is no reason to presume fraud, or to believe that the purchase was made otherwise than in good faith.

12. All sales made at one land office of lands which were only liable to sale at another where the proceedings in all other respects were regular.

13. All bona fide entries on lands which had been once offered, but afterwards temporarily withdrawn from market, and then released from reservation, where such lands are not rightfully claimed by others.

14. All bona fide entries at private sale, allowed at Mineral Point, Wise., and fully paid for, of lands which were not ascertained or reported to contain lead mineral until after the date of said entries, where the land is not rightly claimed by another.

The foregoing regulations are not to embrace any case where



the entry has been canceled or desired by the party or where a subsequent entry of the same land has been legally made by the claimant himself or by another person.

James L. Piper,  
Acting Commissioner of the General Land Office.  
We concur in these rules and regulations, October 3, 1846.

R. J. Walker,  
Secretary of the Treasury.  
J. Y. Mason,  
Attorney-General.

(Rule 15, having become obsolete, is omitted.)

Under the Act of Congress, approved 3d of March, 1853, reviving and continuing in force the Act of 3d of August, 1846, the following rule was established for the government of the Commissioner of the General Land Office:

16. That all locations under the Act of 14th August, 1848, entitled, "An Act in relation to military land warrants," be confirmed and patents issued thereon, where the land located lies in one body, and the only objection to the location is that it consists, technically, of more than one legal subdivision.

James Wilson,  
Commissioner.

We concur in this rule, 16th March, 1854.

R. McClelland,  
Secretary of the Interior.  
C. Cushing,  
Attorney-General.

Department of the Interior,  
General Land Office.

Washington, D. C., April 25, 1877.

Sir: I have the honor to submit herewith, for your concurrence and that of the honorable Attorney-General, a set of rules to govern me in submitting for confirmation, under section 2450 of the Revised Statutes of the United States, entries suspended for various causes, but which upon principles of equity and justice should be confirmed.

Authority to confirm suspended entries of the public lands was first vested in the Secretary of the Treasury, Attorney-General and Commissioner of the General Land Office by Act of Congress of August 3, 1846, and revised and extended by Acts of 3d of March, 1853, and 26th of June, 1856.

Under these Acts, from time to time, sixteen rules have been established, the last March 16, 1854. (See 1 Lester, Land Laws, 482, title 5.)

Since then the different homestead Acts have been passed and new classes of suspended entries under the preemption laws have arisen. I have prepared eleven new rules from Nos. 17 to 27, inclusive. I find that many of the old established rules are obsolete.

Cases in each of the classes mentioned, except class 22, have been confirmed under section 2450 of the Revised Statutes.

It is believed that these classes will cover all agricultural entries falling under general rules.

Special cases not covered by these rules, in which equitable

relief should be afforded, will probably arise. Such cases will be submitted as special, with letters of explanation.

I respectfully request that if you should approve the accompanying rules you will submit them to the honorable Attorney-General for his concurrence:

J. A. Williamson,  
Commissioner.

Hon. Carl Schurz,  
Secretary of the Interior.

Department of the Interior,  
Office of the Secretary.

Washington, D. C., May 18, 1877.

Sir: I return herewith, approved by the Attorney-General and myself, the additional rules transmitted with your letter of the 25th ultimo, numbered from 17 to 27, inclusive, to govern your office in the disposal of suspended entries of public lands under various laws.

I am, sir, very respectfully, your obedient servant,

C. Schurz,  
Secretary.

Hon. J. A. Williamson,  
Commissioner General Land Office.

#### ADDITIONAL RULES.

Under section 2450 of the Revised Statutes of the United States the following rules, additional to those established under the Act of August 3, 1846, are provided for the government of the Commissioner of the General Land Office.

17. All entries where the preemption affidavit was taken before an officer authorized to administer oaths, when, on account of bodily infirmity the party cannot appear at the local office.

18. All entries where the preemption affidavit was taken before some officer other than the Register or Receiver, and the preemptor died before the defect could be cured.

19. All entries made upon land appropriated by entry or selection, but which entry or selection was subsequently cancelled for illegality.

20. Preemption entries in which the party has shown good faith, but did not, through ignorance of the law, declare his intention to become a citizen of the United States until after he made his entry.

21. All entries based upon preemption proof where the party had failed to file a declaratory statement therefor, provided no adverse claim attached prior to entry.

22. All entries of unoffered land, based upon a second declaratory statement, where the same was filed between June 22, 1874, and June 30, 1875.

23. All preemption entries in which the affidavit is defective in not showing that the party was not the owner of 320 acres of land in any State or Territory, and had never had the benefit of the Act, the form for which affidavit was furnished by the local land officers.

24. All homestead entries in which, by reason of ignorance of the law, sickness of the party or his family, the final proof was



not made within the period prescribed by statute, but in other respects the law has been complied with.

25. All homestead entries in which the party failed to settle on the land within the time required by law by reason of physical disability, and where good faith is shown.

26. All homestead entries by mistake made in the name of the wrong party, but where on final proof the error may be corrected without prejudice to another's right.

27. In all homestead entries where the husband has deserted the wife and children, if he have any, who have in good faith complied with the homestead law by residence upon and cultivation of the land and final proof shall be made with the wife, or in case of her death, by her heirs or their legal guardians, such entry shall be confirmed, and patent shall issue to the parties entitled thereto.

J. Williamson,

Commissioner General Land Office.

We concur in the above rules, May 8, 1877.

C. Schurz,

Secretary of the Interior.

Chas. Devens,

Attorney-General.

### **Board of Equitable Adjudication—Amendment of Rules—Regulations.**

Department of the Interior,  
General Land Office.

Washington, D. C., October 17, 1910.

Rules 28, 29, 30, 32 and 33, for the government of the Commissioner of the General Land Office in the submission of entries to the Board of Equitable Adjudication under section 2450, Revised Statutes of the United States, adopted May 12, 1888 (6 L. D., 799), and April 24, 1890 (10 L. D., 502), are hereby amended as follows:

28. All desert land entries made by a duly qualified party under the Act of March 3, 1877, and the subsequent Acts additional to and amendatory of the same, including all such entries which have been assigned to a party duly qualified to be recognized as an assignee, where the land was properly subject to entry under the law and has been reclaimed, and one-eighth of it cultivated, substantially as required by said statutes, but where any of the declarations, affidavits, or proofs required under said statutes were omitted, or are defective, and where, on account of the death or absence of claimant, or his assignors, the missing papers cannot be supplied, or the defective papers amended, and where there is no adverse claim.

29. All desert land entries in which the final proof and payment were not made within four years from the date of entry, or within such additional period as may have been granted in the particular case in pursuance of statutory provisions, but in which the entryman (and the assignee, if the entry has been assigned), were duly qualified, the land properly subject to entry under the statutes, and subsequently reclaimed and one-eighth of it cultivated in due time, according to their requirements, in which the failure to make final proof or payment in due time is satisfactorily explained as being the result of ignorance, accident or mistake, or other

sufficient reason not indicating bad faith, and in which there is no adverse claim.

30. All desert land entries in which the claimant has failed to reclaim or to cultivate the land and to make final proof and payment, as required by the statutes, within four years from date of entry, or within such additional time as may have been granted him, or to which he may have been entitled, under the statutes, but where the entryman (and assignee, if the entry has been assigned), were duly qualified, the land properly subject to entry under the statutes, and actual compliance with the legal requirements as to reclamation, cultivation, acquisition of water rights, and citizenship of claimant is satisfactorily established by the final proof, and the failure to reclaim the land and to cultivate one-eighth of it in time is satisfactorily explained as being the result of ignorance, accident or mistake, or of obstacles which the claimant could not control, and where there is no adverse claim.

Sec. 31, as amended by circular of April 10th, 1890 (10 L. D., P. 503), reads as follows:

All preemption, homestead, commutation of homestead, and timber-culture entries, in which final proof has been made, and in which compliance with one or more legal requirements with reference to the final proof notice or in other respects, does not appear in the papers, because of the neglect or inattention of the district land officers, in allowing the final proof and payment to be made notwithstanding such defect, but where in fact notice was given and in which no adverse claim appears, and the existing testimony shows a substantial, bona fide compliance with the law as to residence and improvement in preemption, homestead, and commutation of homestead entries, or as to the required planting, cultivating and protecting of the timber, in timber-culture entries, or where such facts were satisfactorily shown to the district land officers by proof which was lost in transmission to the General Land Office, and cannot now be renewed by reason of the death of witnesses or other cause.

32. All homestead, timber and stone, and timber-culture entries in which the party has shown good faith, and a substantial compliance with the legal requirements of residence and cultivation of the land, in homestead entries, or the required planting, cultivating and protecting of the timber in timber-culture entries, but in which the party did not, through ignorance of the law, or other sufficient reason not indicating bad faith, declare his intention of becoming a citizen of the United States until after he had made his entry, or, in homestead entries, did not from like cause perfect citizenship until after the making of final proof, and in which there is no adverse claim.

33. All homestead and timber-culture entries in which good faith appears, and a substantial compliance with law, and in which there is no adverse claim, but in which full compliance with law was not effected, or final proof made, within the period prescribed by statute, and in which such failure was caused by any sufficient reason not indicating bad faith.

An additional rule is established as follows:

Rule 34. All homestead entries in which the final affidavit and proof testimony of claimant, and all desert land entries in which



the claimant's deposition or any affidavit required of him as a part of the final proof is taken at his residence or outside of the county or land district in which the land is situated, on account of illness, or in which, in case of the death of the entryman, the heirs competent to make proof are prevented by great distance or the lack of means from appearing before a proper officer within such county or land district to give their testimony, and in which compliance with law in other respects is shown, and all entries of isolated tracts sold at public sale under Sec. 2455, R. S., as amended, wherein compliance with one or more legal requirements with reference to the published notice does not appear in the papers, because of the neglect or inattention of the district land officers in allowing the sale to be made notwithstanding such defect, but where, in fact, notice was given and no adverse claim appears.

Fred Dennett,

Commissioner of the General Land Office.

We concur in the rules as amended and in the additional rule.

Jesse E. Wilson,

Acting Secretary of the Interior.

Geo. W. Wickersham,

Attorney-General.

#### **FEES AND COMMISSIONS—REGISTERS AND RECEIVERS.**

[Circular.]

Department of the Interior,  
General Land Office,

Washington, D. C., May 20, 1905.

To Registers and Receivers of United States Land Offices in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Gentlemen: The following are the fees and commissions allowed by law in full for all services rendered by registers and receivers in your respective land districts:

##### **Declaratory Statements.**

Preemption declaratory statement.....	\$ 3.00
Soldiers' and sailors' homestead declaratory statement.....	3.00
Coal land declaratory statement.....	3.00
Reservoir declaratory statement (Act January 13, 1897).....	3.00

##### **Mineral Applications and Adverse Claims.**

For filing and acting upon each application for a patent.....	\$10.00
For filing and acting upon each adverse claim.....	10.00

##### **Timber and Stone Land Applications.**

For filing and acting upon each application to purchase timber or stone lands, to be paid only when the entry is allowed.....	\$10.00
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##### **Homestead Entries, Original Entry Fees and Commissions, Payable When Application Is Made.**

For 160 acres, at \$1.25 per acre: Fee, \$10.00; commissions, \$ 6.00; total, \$16.00	
For 80 acres, at \$1.25 per acre: Fee, 5.00; commissions, 3.00; total, 8.00	
For 40 acres, at \$1.25 per acre: Fee, 5.00; commissions, 1.50; total, 6.50	
For 160 acres, at 2.50 per acre: Fee, 10.00; commissions, 12.00; total, 22.00	
For 80 acres, at 2.50 per acre: Fee, 5.00; commissions, 6.00; total, 11.00	
For 40 acres, at 2.50 per acre: Fee, 5.00; commissions, 3.00; total, 8.00	

##### **Final Homestead Commissions (No Fees), Payable When Certificate Issues.**

For 160 acres, at \$1.25 per acre.....	\$ 6.00
For 80 acres, at 1.25 per acre.....	3.00
For 40 acres, at 1.25 per acre.....	1.50
For 160 acres, at 2.50 per acre.....	12.00
For 80 acres, at 2.50 per acre.....	6.00

For 40 acres, at 2.50 per acre..... 3.00  
 (The commissions payable on a homestead entry of 160 acres or less must be computed at the rate of 3 per centum strictly on the cash value of the land applied for, except where a different basis for such computation is fixed by statute in particular cases.)

**Final Timber-Culture Commissions (No Fees), Payable When Certificate Issues.**

For each final entry, irrespective of area or price.....\$ 4.00  
 (There is no distinction between minimum and double minimum lands in timber-culture entries.)

**Donation Claims.**

For each final certificate for 160 acres.....\$ 5.00  
 For each final certificate for 320 acres..... 10.00  
 For each final certificate for 640 acres..... 15.00

Note.—For charges to be made by officers preparing and acknowledging papers see "Title Commissioners." See Sec. 2294, Review Statutes, page 446.

**Military Bounty Land Warrants.**

For locating a 160 acre warrant.....\$ 4.00  
 For locating a 120 acre warrant..... 3.00  
 For locating an 80 acre warrant..... 2.00  
 For locating a 60 acre warrant..... 1.50  
 For locating a 40 acre warrant..... 1.00

(No fees are chargeable on warrants issued prior to February 11, 1847.)

(Revolutionary bounty land scrip is received and accounted for as cash, and no fee is chargeable to parties presenting such scrip.)

**Porterfield Warrants (Act of April 11, 1860).**

For locating these warrants the same fees are chargeable as are allowed for military bounty land warrants.

**Cash Entries.**

The commissions of registers and receivers on cash sales of the public lands are paid by the United States, and no fees or commissions on such sales are chargeable to the purchasers, except in cases of homestead entries on ceded Indian reservations affected by the Act of May 17, 1900 (31 Stat., 179), and commuted under the provisions of the Act of January 26, 1901 (31 Stat., 740), in which cases the entryman is required to pay a commission of 3 per centum on the cash price of the land (31 L. D., 106).

**State Selections.**

For each final location of 160 acres (or fraction thereof) under any grant of Congress to States (except for agricultural colleges).....\$ 2.00

No fees are chargeable on State swamp-land selections, but a fee of \$2.00 is to be collected on each location of 160 acres, or fraction thereof, made with swamp-land indemnity certificates.

For method of computing fees, see "Railroad and Other Selections."

**Railroad and Other Selections.**

For each final location of 160 acres (or fraction thereof) by railroad or other corporations .....\$ 2.00

(In computing the amount of fees payable on a list of State or railroad selections, the receiver will divide the total area by 160; the quotient will be the number of 160-acre selections on which a fee of \$2.00 each is chargeable. Should the quotient consist of a fraction over a whole number, the legal fee of \$2.00 will be collected for such fraction).

**Agricultural College Scrip.**

For each piece of agricultural college scrip located.....\$ 4.00

**Private Land Scrip, Valentine Scrip.**

For each piece of scrip filed on unsurveyed lands.....\$ 1.00  
 For each location of scrip..... 1.00

**Supreme Court Scrip.**

No fees or commissions are allowed on the location of supreme court scrip, nor on the location of Indian scrip or other private land scrip, except as specially provided for by law or instructions.



### Reducing Testimony to Writing.

Fees for reducing testimony to writing are allowed at the rate of 22½ cents for each 100 words in the following cases only:

1. In making final proof in preemption cases.
2. In making final proof in commuted and noncommuted homestead and timber-culture cases.
3. In establishing claims to mineral lands.
4. In establishing claims to timber and stone lands.
5. In hearings before registers and receivers in contested cases.
6. The same fees are also payable to registers and receivers for examining and approving final-proof testimony taken in homestead and timber-culture cases in which the proof has been taken before some other officer authorized by law to take testimony in such cases.

No testimony fees are chargeable by registers and receivers for taking final proofs in desert-land entries.

No fees are allowed for reducing testimony to writing in any case where the writing is not done by the register or receiver, or by the employees in their office. In computing the fees for reducing testimony to writing, only the words actually written must be charged for at the rate allowed by paragraphs 10, 11, and 12, of section 2238, R. S., and no charge is to be made for the printed words. The words written must be actually counted and charged for, and there can be no uniform fee of a specified sum applicable to every case of the same class of entries; that is, registers and receivers cannot fix the fee at \$1.00 or any other sum for each preemption, final homestead, mineral or other entry.

### Transcripts from Records.

Registers and receivers are entitled to charge at the rate of 10 cents per hundred words for making transcripts of their records for individuals (Act of Congress of March 22, 1904).

### Record Information.

Registers and receivers for any consolidated land district are entitled to charge and receive for any record information respecting public lands or land titles in their consolidated land district such fees as are properly authorized by the tariff existing in the local courts of such district (Sec. 2239, R. S.).

(Consolidated districts are those districts into which one or more previously existing districts have been merged.)

### Plats and Diagrams.

Registers and receivers of all districts are also authorized to furnish plats, diagrams, etc.

Under the second section of the Act of March 3, 1883, authorizing a charge to be made for plats, diagrams, etc., the fees for the same are hereby fixed as follows:

For a diagram showing entries only.....	\$ 1.00
For a township plat showing entries, names of claimants, and character of entry .....	2.00
For a township plat showing entries, names of claimants, character of entry and number.....	3.00
For a township plat showing entries, names of claimants, character of entry, number and date of filing or entry, together with topography, etc. ....	4.00

The plat or diagram must be of standard size (Form 4-590b) and it must be a correct and complete delineation of the particular township. There is no legal authority under said statute for registers and receivers to furnish a plat of a section or subdivision, or any other fraction of a township, and to charge or receive therefor a proportionate part of the authorized fee.

For lists of lands sold, furnished State or Territorial authorities for the purpose of taxation, compensation for the same at the rate of 10 cents per entry.

### Cancellation Notices.

For giving notices to contestants of the cancellation of any preemption, homestead, or timber-culture entry.....

No fees, commissions, or rewards are required or allowed to be paid at United States Land Offices for extra services of any character whatever; and registers and receivers are absolutely prohibited by law from charging or receiving, directly or indirectly, any fee or compensation not expressly author-

ized by law, or for any service not imposed upon them by law, or a greater fee for compensation in any case than specifically allowed by law. Officers charging or receiving illegal fees, compensation or gratuity are subject to summary dismissal from office, in addition to the penalties provided in title "Crimes," chapter "Official Misconduct," United States Revised Statutes. Illegal fees received by clerks, employees or agents are received by the land officers within the meaning and prohibitions of the law, and registers and receivers will be held personally and officially responsible therefor.

W. A. Richards, Commissioner.

Approved May 20, 1905:

E. A. Hitchcock, Secretary.

[Circular.]

Department of the Interior,  
General Land Office,  
Washington, D. C., May 20, 1905.

To Registers and Receivers of United States Land Offices in Alabama, Arkansas, Florida, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin.

Gentlemen: The following are the fees and commissions allowed by law in full for all services rendered by registers and receivers in your respective land districts:

**Declaratory Statements.**

Preemption declaratory statement.....	\$ 2.00
Soldiers' and sailors' homestead declaratory statement.....	2.00
Coal land declaratory statement.....	2.00
Reservoir declaratory statement (Act January 13, 1897).....	2.00

**Mineral Applications and Adverse Claims.**

For filing and acting upon each application for a patent.....	\$10.00
For filing and acting upon each adverse claim.....	10.00

**Timber and Stone Land Applications.**

For filing and acting upon each application to purchase timber or stone lands, to be paid only when the entry is allowed.....	\$10.00
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**Homestead Entries, Original Entry Fees and Commissions, Payable When Application Is Made.**

For 160 acres, at \$1.25 per acre: Fee, \$10.00; commissions, \$4.00; total,	\$14.00
For 80 acres, at 1.25 per acre: Fee, 5.00; commissions, 2.00; total,	7.00
For 40 acres, at 1.25 per acre: Fee, 5.00; commissions, 1.00; total,	6.00
For 160 acres, at 2.50 per acre: Fee, 10.00; commissions, 8.00; total,	18.00
For 80 acres, at 2.50 per acre: Fee, 5.00; commissions, 4.00; total,	9.00
For 40 acres, at 2.50 per acre: Fee, 5.00; commissions, 2.00; total,	7.00

**Final Homestead Commissions (No Fees), Payable When Certificate Issues.**

For 160 acres, at \$1.25 per acre.....	\$ 4.00
For 80 acres, at 1.25 per acre.....	2.00
For 40 acres, at 1.25 per acre.....	1.00
For 160 acres, at 2.50 per acre.....	8.00
For 80 acres, at 2.50 per acre.....	4.00
For 40 acres, at 2.50 per acre.....	2.00

(The commissions payable on a homestead entry of 160 acres or less must be computed at the rate of 2 per centum strictly on the cash value of the land applied for, except where a different basis for such computation is fixed by statute in particular cases.)

**Final Timber-Culture Commissions (No Fees), Payable When Certificate Issues.**

For each final entry, irrespective of area or price.....	\$ 4.00
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(There is no distinction between minimum and double-minimum lands in timber-culture entries.)

**Military Bounty Land Warrants.**

For locating a 160-acre warrant.....	\$ 4.00
For locating a 120-acre warrant.....	3.00
For locating a 80-acre warrant.....	2.00
For locating a 60-acre warrant.....	1.50
For locating a 40-acre warrant.....	1.00



(No fees are chargeable on warrants issued prior to February 11, 1847.)

(Revolutionary bounty land scrip is received and accounted for as cash, and no fee is chargeable to parties presenting such scrip.)

#### Porterfield Warrants (Act of April 11, 1860).

For locating these warrants the same fees are chargeable as are allowed for military bounty land warrants.

#### Cash Entries.

The commissions of registers and receivers on cash sales of the public lands are paid by the United States, and no fees or commissions on such sales are chargeable to the purchasers, except in cases of homestead entries on ceded Indian reservations affected by the Act of May 17, 1900 (31 Stat., 179), and commuted under the provisions of the Act of January 26, 1901 (31 Stat., 740), in which cases the entryman is required to pay a commission of 2 per centum on the cash price of the land (31 L. D., 106).

#### State Selections.

For each final location of 160 acres (or fraction thereof) under any grant of Congress to States (except for agricultural colleges).....\$ 2.00

No fees are chargeable on State swamp-land selections, but a fee of \$2.00 is to be collected on each location of 160 acres, or fraction thereof, made with swamp-land indemnity certificates.

For method of computing fees, see "Railroad and Other Selections."

#### Railroad and Other Selections.

For each final location of 160 acres (or fraction thereof) by railroads or other corporations .....\$ 2.00

(In computing the amount of fees payable on a list of State or railroad selections, the receiver will divide the total area by 160; the quotient will be the number of 160-acre selections on which a fee of \$2.00 each is chargeable. Should the quotient consist of a fraction over a whole number, the legal fee of \$2.00 will be collected for such fraction).

#### Agricultural College Scrip.

For each piece of agricultural college scrip located.....\$ 4.00

#### Private Land Scrip, Valentine Scrip.

For each piece of scrip filed on unsurveyed lands.....\$ 1.00

For each location of scrip..... 1.00

#### Supreme Court Scrip.

No fees or commissions are allowed on the location of supreme court scrip, nor on the location of Indian scrip or other private land scrip, except as specially provided for by law and instructions.

#### Reducing Testimony to Writing.

Fees for reducing testimony to writing are allowed at the rate of 15 cents for each 100 words in the following cases only:

1. In making final proof in preemption cases.
2. In making final proof in commuted and noncommuted homestead and timber-culture cases.
3. In establishing claims to mineral lands.
4. In establishing claims to timber and stone lands.
5. In hearings before registers and receivers in contested cases.
6. The same fees are also payable to registers and receivers for examining and approving final-proof testimony taken in homestead and timber-culture cases in which the proof has been taken before some other officer authorized by law to take testimony in such cases.

No testimony fees are chargeable by registers and receivers for taking final proofs in desert-land entries.

No fees are allowed for reducing testimony to writing in any case where the writing is not done by the register or receiver, or by the employees in their office. In computing the fees for reducing testimony to writing, only the words actually written must be charged for at the rate allowed by paragraphs 10 and 11 of section 2238, R. S., and no charge is to be made for the printed words. The words written must be actually counted and charged for, and there can be no uniform fee of a specified sum applicable to every case of the same

class of entries; that is, registers and receivers cannot fix the fee at \$1.00 or any other sum for each preemption, final homestead, mineral or other entry.

#### Transcript from Record.

Registers and receivers are entitled to charge at the rate of 10 cents per hundred words for making transcripts of their records for individuals (Act of Congress of March 22, 1904).

#### Record Information.

Registers and receivers for any consolidated land district are entitled to charge and receive for any record information respecting public lands or land titles in their consolidated land district such fees as are properly authorized by the tariff existing in the local courts of such district (Sec. 2239, R. S.).

Consolidated districts are those districts into which one or more previously existing districts have been merged.

#### Plats and Diagrams.

Registers and receivers of all districts are also authorized to furnish plats, diagrams, etc.

Under the second section of the Act of March 3, 1883, authorizing a charge to be made for plats, diagrams, etc., the fees for the same are hereby fixed as follows:

For a diagram showing entries only.....	\$ 1.00
For a township plat showing entries, names of claimants, and character of entry .....	2.00
For a township plat showing entries, names of claimants, character of entry, and number.....	3.00
For a township plat showing entries, names of claimants, character of entry, number and date of filing of entry, together with topography, etc. ....	4.00

The plat or diagram must be of standard size (Form 4-590b), and it must be a correct and complete delineation of the particular township. There is no legal authority under said statute for registers and receivers to furnish a plat of a section or subdivision, or any other fraction of a township, and to charge or receive therefor a proportionate part of the authorized fee. For lists of lands sold, furnished State or Territorial authorities for the purpose of taxation, compensation at the same rate of 10 cents per entry.

#### Cancellation Notices.

For giving notices to contestants of the cancellation of any preemption, homestead, or timber-culture entry.....\$ 1.00

No fees, commissions, or rewards are required or allowed to be paid at United States Land Offices for extra services of any character whatever; and registers and receivers are absolutely prohibited by law from charging or receiving, directly or indirectly, any fee or compensation not expressly authorized by law, or for any service not imposed upon them by law, or a greater fee or compensation in any case than specifically allowed by law. Officers charging or receiving illegal fees, compensation, or gratuity are subject to summary dismissal from office, in addition to the penalties provided in title "Crimes," chapter "Official Misconduct," United States Revised Statutes. Illegal fees received by clerks, employees, or agents are received by the land officers within the meaning and prohibitions of the law, and registers and receivers will be held personally and officially responsible therefor.

W. A. Richards, Commissioner.

Approved May 20, 1905:

E. A. Hitchcock, Secretary.

Note.—For charges to be made by person taking acknowledgements, see page 446.

#### FEES OF LOCAL OFFICERS FOR REDUCING TESTIMONY TO WRITING.

##### Instructions.

Department of the Interior,  
General Land Office,  
Washington, D. C., June 5, 1908.

Registers and Receivers,

United States Land Offices.

Gentlemen: Your attention is directed to section 14 of the Act of Congress, approved May 29, 1908 (Public—No. 160), as follows:



Sec. 14. That subdivision ten of section twenty-two hundred and thirty-eight of the Revised Statutes of the United States be, and the same is hereby amended so as to read as follows:

"Tenth. Registers and receivers are allowed jointly at the rate of fifteen cents per hundred words for testimony reduced by them to writing for claimant in establishing preemption, desert land, and homestead rights."

So much of office circulars of May 20, 1905 (33 L. D., 629 and 633), as conflicts with the foregoing is hereby revoked.

Very respectfully,

Fred Dennett, Commissioner.

Approved:

Frank Pierce, Acting Secretary.

## **FEES FOR CARBON COPIES OF TESTIMONY IN CONTEST CASES.**

### **Instructions.**

Department of the Interior,  
General Land Office,  
Washington, D. C., May 28, 1910.

Registers and Receivers,

United States Land Offices.

Sirs: When the reducing of testimony to writing in a contest case is done by regularly appointed employees of your office, carbon copies may be furnished at the rate of 5 cents per page, irrespective of the number of words or figures thereon.

If the testimony is reduced to writing by a clerk employed under authority of the circular of February 15, 1909 (37 L. D., 448), such clerk will be allowed to make a charge of not exceeding 5 cents per page for each carbon copy, to be collected by him from the party to whom the same is furnished.

Very respectfully,

Fred Dennett.

Approved:

R. A. Ballinger, Secretary.

[In Reply Please Refer to Circular No. 80.]

Department of the Interior,  
General Land Office,  
Washington, February 2, 1912.

## **HOMESTEAD FEES.**

Registers and Receivers,

United States Land Offices.

Sirs: Your attention is called to departmental decision in the case of Sorli vs. Berg (40 L. D., 259), which enforces section 2289, R. S., forbidding homestead entries by any person who is the proprietor of more than 160 acres, even though the excess be less than one acre. It follows that the same construction will, when applied to section 2290, R. S., overrule the departmental decision in the case of Alcide Guidney (8 Copp's Land Owner, 157), which formed the basis of the present rule for the collection of a fee of only \$5 where the application embraced less than 81 acres. This new rule will require the payment of a fee of \$10 under all applications for all homestead entries which embrace more than 80 acres, and you are, therefore, directed to require payments accordingly under all applications hereafter presented.

Very respectfully,

Fred Dennett, Commissioner.

Approved February 2, 1912:

Samuel Adams, First Assistant Secretary.

[Circular No. 125.]

## **ENACTMENT OF THREE-YEAR HOMESTEAD LAW.**

Department of the Interior,  
General Land Office,  
Washington, June 10, 1912.

Sir: There is printed below a copy of an Act passed by Congress and signed by the President on June 6, 1912, amending sections 2291 and 2297 of the Revised Statutes of the United States

relating to homesteads and homestead entries. I call your particular attention to the last proviso to section 2291, reading as follows:

Provided, That the Secretary of the Interior shall, within sixty days after the passage of this Act, send a copy of the same to each homestead entryman of record who may be effected thereby by ordinary mail to his last known address, and any such entryman may, by giving notice within one hundred and twenty days after the passage of this Act, by registered letter to the register and receiver of the local land office, elect to make proof upon his entry under the law under which the same was made without regard to the provisions of this Act.

If you wish to elect to make proof upon your entry under the law under which the same was made, you must give notice thereof within 120 days after June 6, 1912, to the Register and Receiver of the local land office. This notice must be sent by registered mail and may not be sent in any other way. If, in your case, you desire to make proof under the law under which you made your entry, there is, for your convenience, inclosed herewith a printed notice of election, which you may fill out and use for that purpose.

Unless you elect in the manner and form and within the time above stated your entry will, without notice become subject to the provisions of said act of June 6, 1912; and in reaching a decision as to which course you prefer you should first carefully examine the provisions and requirements of the new act printed herewith.

Very respectfully,

FRED DENNETT,  
Commissioner.

Approved:

WALTER L. FISHER,  
Secretary.

Note.—For form of election see page —. For copy of Act mentioned above see page —. For forms of notice of beginning and termination of leave of absence see page —.

#### ELECTION TO MAKE PROOF UNDER LAW UNDER WHICH ENTRY WAS MADE.

Act of June 6, 1912 (Public, No. 179).

\_\_\_\_\_  
(Place.)

\_\_\_\_\_  
(Date.)

Register and Receiver,  
United States Land Office,

\_\_\_\_\_  
(Place.)

Sirs: On \_\_\_\_\_ I made Homestead Entry No. \_\_\_\_\_, for \_\_\_\_\_  
See. \_\_\_\_\_, T. \_\_\_\_\_, R. \_\_\_\_\_, \_\_\_\_\_ Meridian.

Under the privilege allowed by section 2291, U. S. R. S., as amended by the Act of June 6, 1912 (Public, No. 179), I hereby give notice that I elect to make proof on said entry under the law under which the same was made.

My post-office address is \_\_\_\_\_

\_\_\_\_\_  
(Sign name in full.)

[Circular No. 142.]

#### THE THREE-YEAR HOMESTEAD LAW.

Department of the Interior,  
Washington, July 15, 1912.

The Commissioner of the General Land Office.

Sir: Questions having arisen, through correspondence and otherwise, as to the construction to be given the several provisions of the



new homestead law of June 6, 1912 (Public, No. 179), I have thought it advisable at this time to give the following general outline of my understanding of this Act as affecting entries made prior to its passage, as well as those made thereafter; also to prescribe an order of procedure to be respected in matter of applications for reduction of the required area of cultivation and to promulgate a rule prescribing the amount of cultivation to be required respecting entries made prior to, but which are to be adjudicated under, the new law:

#### **RESIDENCE.**

(1) By the Act of June 6, 1912 (Public, No. 179), the period of residence necessary to be shown in order to entitle a person to patent under the homestead laws is reduced from five to three years, and the period within which a homestead entry may be completed is reduced from seven to five years. The three-year period of residence, however, is fixed not from the date of the entry but "from the time of establishing actual permanent residence upon the land." It follows, as a consequence, that credit can not be given for constructive residence for the period that may elapse between the date of the entry and that of establishing actual permanent residence upon the land.

(2) Honorably discharged soldiers and sailors of the War of the Rebellion and also of the Spanish War and the suppression of the insurrection in the Philippines, entitled to claim credit under their homestead entries for the period of their military service, may do so after they have "resided upon, improved, and cultivated the land for a period of at least one year" after they shall have commenced their improvements. This is the requirement of section 2305 of the Revised Statutes, which is in nowise affected by the Act of June 6, 1912. Respecting the cultivation to be required under said section it has been heretofore administered as requiring such showing as ordinarily applies in other cases preliminary to final proof, and as the new law exacts showing of cultivation of at least one-eighth of the area before final proof a showing should be exacted of a like amount for at least one year before final proof.

#### **CULTIVATION.**

(3) Prior to the passage of this act no specific amount of cultivation had been required respecting a homestead entry made under the general law; that is, an entry for 160 acres. With respect to every such entry section 2291 of the Revised Statutes had required proof of "cultivating the same for the term of five years immediately succeeding the time of filing affidavit." The words "the same" could refer only to the entry, and literally construed would require the cultivation of the entire tract entered for the term of five years. But a more liberal interpretation has properly obtained in the Land Department, and proof has been accepted upon a showing that the tract has been used in a husband-like manner, even though a smaller part of the entire entry had been actually cultivated than was in fact susceptible of cultivation. Furthermore, the long period of residence required (five years) has, in many instances, led to the acceptance of even a much smaller area of cultivation than husband-like methods and the character

of the land would have reasonably justified. Under exceptional circumstances grazing land has been accepted as the equivalent of cultivation, where the lands were valuable only for grazing purposes. This can not be justified under any known definition of "cultivation," although some special legislation with reference to lands formerly within Indian reservations seems to require such a construction with respect to these particular lands. Under this special legislation lands formerly within certain Indian reservations have been first specifically classified as grazing lands, and then specifically opened to entry under the homestead law. It would be impossible to administer these special laws unless grazing is accepted as a compliance therewith, where it can be shown that the lands are in fact not capable of cultivation. The classification, however, was general, and where the general area was grazing in character it was so classified, even where it embraced local areas susceptible of cultivation. Where such lands are in fact physically and climatically susceptible of tillage, the cultivation provisions of the new homestead law must be applied. By that law it is required that the claimant "cultivate not less than one-sixteenth of the area of his entry, beginning with the second year of the entry and not less than one-eighth beginning with the third year of the entry, and until final proof, except that in the case of entries under section 6 of the enlarged-homestead laws, double the area of cultivation herein provided shall be required, but the Secretary may, upon a satisfactory showing, under rules and regulations prescribed by him, reduce the required area of cultivation."

(4) The enlarged homestead Acts here referred to (35 Stat., 639), (36 Stat., 531), authorize entries of 320 acres of lands designated for this purpose by the Secretary of the Interior, and requires proof "that at least one-eighth of the area embraced in the entry was continuously cultivated to agricultural crops, other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry." The residence provisions of the homestead law (and now of the new act) were applicable to these entries, with an exception relating to certain lands in the States of Utah and Idaho, with respect to which the requirement of resident is omitted, and in lieu thereof the entryman is required to cultivate twice the area required under the general provisions of the Act. The enlarged homestead Acts were intended to apply generally to lands suitable for cultivation only under dry-farming methods, and under these methods it is customary to summer fallow a portion of the land one year, planting it the following year. Under the new law such summer fallowing can not be accepted as the equivalent of cultivation, and this was equally true of the old laws, which required the land to be "cultivated to agricultural crops other than native grasses." The new law, however, does reduce the required area of cultivation to not less than one-sixteenth during the second year of the entry, and not less than one-eighth during the third year of the entry, and until final proof, except that in the case of entries under section 6 of the enlarged homestead laws, where residence is not required, one-eighth of the area of the entry must be cultivated during the second year, and one-quarter beginning with the third



year of the entry, and until final proof. In other words, the effect of the new law, with respect to the enlarged homestead Acts, except in instances where residence is not required, is generally to reduce by one-half the amount of cultivation to agricultural crops other than native grasses, which had previously been required.

#### CHARACTER OF CULTIVATION.

(5) In reducing the period of residence required in perfecting title to a tract of land entered under the homestead law from five to three years Congress has required that it be shown that an actual cultivation has been accomplished of at least certain specified portions of the land entered. This amount has been fixed at one-sixteenth, beginning with the second year of the entry, and one-eighth the following year, and until proof is offered. In view of the liberal reduction in the period of residence making it possible to secure title in three years, which would require a showing of but two years' cultivation of one-sixteenth of the area entered, and an additional one-sixteenth for but one year, a mere breaking of the soil will not meet the terms of the statute, but such breaking or stirring of the soil must also be accompanied by planting or the sowing of seed and tillage for a crop other than native grasses.

(6) It should be noted that under the new law the period within which the cultivation should be made is reckoned from the date of the entry.

#### REDUCTION OF CULTIVATION.

(7) The Secretary of the Interior is authorized, upon a satisfactory showing therefor, to reduce the required area of cultivation. In the administration of this provision it is not believed that the physical or financial disabilities or misfortunes of the entryman should be the grounds of reduction, but the sole question should be as to whether, under the peculiar conditions governing the tract entered, the exaction of cultivation of this particular tract by any entryman to the amount required is reasonable. The actual special physical and climatic conditions of the land entered in each case must therefore determine whether the required amount of cultivation should be reduced. It is desirable that the entryman should, wherever practicable, know in advance what, if any, reduction can properly be made; and therefore, as a general regulation governing applications for reduction in area of cultivation, it is directed that all entrymen who desire a reduction shall file applications therefor during the first year of the entry and upon forms to be prepared and furnished by the Commissioner of the General Land Office and distributed through the land offices. Where a satisfactory showing is filed in support of an application for reduction, you will submit the same with your recommendation in the premises; otherwise the application will be by you rejected subject to the usual right of appeal. The final granting of any reduction in area of cultivation rests with the Secretary of the Interior, who may in appropriate cases defer action until final proof.

#### EXCEPTIONS.

(8) The requirements as to cultivation do not apply to entries

made for lands within a reclamation project under the Act of June 17, 1902 (32 Stat., 388), nor to entries made in State of Nebraska under the Act of April 28, 1904 (33 Stat., 547), commonly known as the Kinkaid Act. In such instances the existing requirements as to cultivation made by the Acts named continue in force.

### **ENTRIES NOT REQUIRING RESIDENCE.**

(9) In all entries made under section 6 of the enlarged homestead Acts (35 Stat., 639, and 36 Stat., 531), under which residence is not required, the entryman must cultivate at least one-eighth of the land in the second year after date of the entry and one-fourth of it during each year thereafter until he makes proof, and the existing period of cultivation required under said Acts is not reduced by the Act of June 6, 1912.

### **PERMISSIBLE ABSENCES FROM THE HOMESTEAD.**

(10) The law clearly requires that the homestead entryman shall establish an actual residence upon the land entered within six months after the date of entry. Where, owing to climatic reasons, sickness, or other unavoidable cause, residence can not be commenced within this period, the Commissioner of the General Land Office may, within his discretion, allow the settler such additional period, not exceeding in the aggregate 12 months, within which to establish his residence. It is not meant thereby that because, for the reasons stated, residence may not be commenced within the six-months' period, that the settler is authorized to delay the commencement of residence beyond the required period and after the cause no longer exists. It is not thought necessary to require an application in advance in order to entitle the settler to this additional privilege, but the full circumstances will be open to investigation and consideration upon contest.

(11) After the establishment of residence the entryman is permitted to be absent from the land for one continuous period of not more than five months in each year following, provided that upon absenting himself for such period he has filed in the local land office notice of the beginning of such intended absence. He must also file notice with the local land office upon his return to the land following such period of absence.

(12) In according such extended periods of absence the Congress has dealt liberally with the homestead entryman, and bona fide continuous residence during the remaining portions of the three-year period must be clearly shown.

(13) A second period of absence immediately following the first period, even though the two periods occur in different years, reckoned from the date of the establishment of actual residence, will not be recognized, as it was never contemplated that an absence was permissible in excess of six months in view of the specific provisions for contest provided for in section 2197 of the Revised Statutes. There should be at least some substantial period of actual continuous residence upon the land separating the periods of absence accorded under the statute. Only those protracted absences with respect to which notice has been given as required by the statute will be respected either in case of contest or on final proof. This



law does not repeal or modify the Acts of March 2, 1889 (25 Stat., 854), June 25, 1910 (36 Stat., 864), and April 30, 1912 (37 Stat., —).

#### **COMMUTATION.**

(14) The privilege of commutation after 14 months' actual residence, as heretofore required by law, is unaffected by this legislation, excepting that the person commuting must be at the time a citizen of the United States. It has heretofore been the practice to permit the making of commutation proof upon a homestead entry by one who had merely declared his intention to become a citizen of the United States and prior to his actual naturalization. This practice, however, is abrogated, and in instances where commutation proof is made after the passage of this Act it should be exacted and shown that the claimant, if foreign born, has become fully naturalized. Commutation proof can not, however, be made on entries under the enlarged homestead laws, the reclamation Act, or on entries made under any other homestead law which prohibits commutation.

#### **DEATH OF THE HOMESTEAD ENTRYMAN.**

(15) Where the person making homestead entry dies before the offer of final proof, those succeeding to the entry in the order prescribed under the homestead law, in order to complete such entry must show that the entryman had complied with the law in all respects to the date of his death, and that they have since complied with the law in all respects as would have been required of the entryman had he lived, excepting that they are relieved from any requirement of residence upon the land. It follows, as a consequence, that where the entryman had not complied with the law in all respects prior to his death the entry will be forfeited, and upon proof thereof such entry will be canceled. This will apply to all entries made under the new law and those made prior to the passage of this Act, where the entryman fails to elect to make proof under the law under which his entry was made.

#### **ELECTION BY ENTRYMEN UNDER ENTRIES MADE PRIOR TO THIS ACT.**

(16) The provisions of section 2291 of the Revised Statutes, as amended, in respect to the homestead period, are made applicable to all unperfected entries upon which residence is required, as well as to those made after June 6, 1912, where the entryman fails to elect to make proof under the law under which his entry was made within the prescribed time. This obligates the previous entryman to compliance with the law of June 6, 1912, respecting all of its provisions, the performance of which is exacted during the homestead period. As a consequence, while residence is reduced from five to three years, specific cultivation is exacted beginning with the second year after entry. Final proof of full compliance must be made within five years from date of entry.

#### **RULE PRESCRIBED RESPECTING CULTIVATION TO BE SHOWN ON ENTRIES MADE PRIOR TO, BUT ADJUDICATED UNDER, NEW LAW.**

(17) It may be that such prior entryman can not show that he had cultivated one-sixteenth of the area embraced in his entry beginning with the second year of the entry and one-eighth begin-

ning with the third year of the entry and until final proof, although he may have had during the year preceding his offer of proof one-eighth or more of the area embraced in his entry under actual cultivation, and may have cultivated one-sixteenth during the previous year, thus accomplishing the amount of cultivation required as a general rule under the new law, but not in the order and for the particular years required by that law.

(18) By the section I am authorized, under rules and regulations to be prescribed by me, to reduce the required area of cultivation. Acting thereunder, I have prescribed the following rule to govern action on proof where the homestead entry was made prior to June 6, 1912, but, through failure of election, must be adjudicated under the new law:

shows cultivation of at least one-sixteenth for one year and of at least one-eighth for the next year and each succeeding year until faith of the entryman appears, the proof will be acceptable if it

Respecting cultivation necessary to be shown upon such an entry, in all cases where, upon considering the whole record, the good final proof, without regard to the particular year of the homestead period in which the cultivation of the one-sixteenth was performed.

**TIME FOR PROOF ON ENTRIES MADE BEFORE BUT ADJUDICATED UNDER NEW LAW.**

(19) The new law also requires that the proof shall be made within five years from date of entry and if the entry is to be administered under that law the Department is not authorized to extend the period within which proof may be made, but when submitted after that time, in the absence of adverse claims, the entry may be submitted to the Board of Equitable Adjudication for confirmation.

(20) Respecting entries heretofore or hereafter made requiring payment for the land entered in annual installments extending beyond the period of residence required under the new law, the homesteader may make his proof as in other cases, but final certificate will not be issued until the entire purchase price has been paid.

(21) It may not be to the advantage of all entrymen to have their entries adjudicated under the new law, and the matter should be seriously considered before acting upon the election accorded previous entrymen under the statute.

(22) Unless they elect to make proof under the law under which their entries were made within the time accorded under the statute—i. e., on or before October 4, 1912—it will be incumbent upon the Department to exact compliance with the new law, subject to the regulation herein above established.

The local officers will be furnished with copies hereof for their use when inquiries are made of them respecting the new law.

Very respectfully,

WALTER L. FISHER, Secretary.

[Public—No. 179.]

An Act to Amend Section Twenty-two Hundred and Ninety-one and Section Twenty-two Hundred and Ninety-seven of the Revised Statutes of the United States Relating to Homesteads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-two hundred and



ninety-one and section twenty-two hundred and ninety-seven of the Revised Statutes of the United States be amended to read as follows:

"Sec. 2291. No certificate, however, shall be given or patent issued therefor until the expiration of three years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry, or if he be dead his widow, or in case of her death his heirs or devisee, or in case of a widow making such entry her heirs or devisee, in case of her death, proves by himself and by two credible witnesses that he, she, or they have a habitable house upon the land and have actually resided upon and cultivated the same for the term of three years succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in section twenty-two hundred and eighty-eight, and that he, she, or they will bear true allegiance to the Government of the United States, then in such case he, she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law: Provided, That upon filing in the local land office notice of the beginning of such absence, the entryman shall be entitled to a continuous leave of absence from the land for a period not exceeding five months in each year after establishing residence, and upon the termination of such absence the entryman shall file a notice of such termination in the local land office, but in case of commutation the fourteen months' actual residence as now required by law must be shown, and the person commuting must be at the time a citizen of the United States: Provided, That when the person making entry dies before the offer of final proof those succeeding to the entry must show that the entryman had complied with the law in all respects to the date of his death and that they have since complied with the law in all respects, as would have been required of the entryman had he lived, excepting that they are relieved from any requirement of residence upon the land: Provided further, That the entryman shall, in order to comply with the requirements of cultivation herein provided for, cultivate not less than one-sixteenth of the area of his entry, beginning with the second year of the entry, and not less than one-eighth, beginning with the third year of the entry, and until final proof, except that in the case of entries under section six of the enlarged-homestead law double the area of cultivation herein provided shall be required, but the Secretary of the Interior may, upon a satisfactory showing, under rules and regulations prescribed by him, reduce the required area of cultivation: Provided, That the above provision as to cultivation shall not apply to entries under the Act of April twenty-eighth, nineteen hundred and four, commonly known as the Kinkaid Act, or entries under the Act of June seventeenth, nineteen hundred and two, commonly known as the reclamation Act, and that the provisions of this section relative to the homestead period shall apply to all unperfected entries as well as entries hereafter made upon which residence is required: Provided, That the Secretary of the Interior shall, within sixty days after the passage of this Act, send a copy of the same to each homestead entryman of record who may be affected thereby, by ordinary mail to his last known address, and any such entryman may, by giving notice within one hundred and twenty days after the passage of this Act, by registered letter to the register and receiver of the local land office, elect to make proof upon his entry under the law under which the same was made without regard to the provisions of this Act."

"Sec. 2297. If, at any time after the filing of the affidavit as required in section twenty-two hundred and ninety and before the expiration of the three years mentioned in section twenty-two hundred and ninety-one, it is proved; after due notice to the settler, to the satisfaction of the register of the land office that the person having filed such affidavit has failed to establish residence within six months after the date of entry, or abandoned the land for more than six months at any time, then and in that event the land so entered shall revert to the Government: Provided, That the three years' period of residence herein fixed shall date from the time of establishing actual permanent residence upon the land: And provided further, That where there may be climatic reasons, sickness, or other unavoidable cause, the Commissioner of the General Land Office may, in his discretion, allow the settler twelve months from the date of filing in which to commence his residence on said land under such rules and regulations as he may prescribe."

Approved June 6, 1912.

**INSTRUCTIONS UNDER THE ACT APPROVED JUNE 22, 1910  
(36 STAT., 583), "TO PROVIDE FOR AGRICULTURAL  
ENTRIES ON COAL LANDS," WITH AMENDMENT OF  
SEPTEMBER 27, 1910.**

Department of the Interior,  
General Land Office,  
Washington, September 8, 1910.

Registers and Receivers,  
United States Land Offices.

The following instructions are issued for your guidance in the administration of the Act of Congress approved June 22, 1910 (36 Stat., 583), "An Act to provide for agricultural entries on coal lands," a copy of which is appended hereto.

**THE PURPOSE OF THE ACT.**

1. This act was not designed to operate as an implied repeal of any provision of the Act of March 3, 1909 (35 Stat., 844). There is no inconsistency between the two Acts, and both of them may have harmonious operation within their proper spheres. The earlier law provides a remedy in those cases in which entries, locations, and selections have been or may be made for lands which, subsequently to entry, location, or selection, have been, or may be, claimed, classified, or reported as being valuable for coal, while the later Act permits dispositions (therein named) to be made of lands valuable for coal, notwithstanding that they may have been previously withdrawn, or classified as such. The proviso to section 1 of the later Act also affords relief to those persons who, prior to June 22, 1910, in good faith, made entries, locations, or selections of lands which, at the date of such entries, locations, or selections, had been withdrawn or classified, as valuable for coal.

**LANDS TO WHICH THE ACT IS APPLICABLE.**

2. The Act applies to unreserved public lands of the United States in those States and Territories in which the coal-land laws are applicable, exclusive of the District of Alaska, which have been withdrawn from coal entry and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified. It does not change, repeal, or modify agreements or treaties made with Indian tribes for the disposition of their lands, or apply to lands ceded to the United States to be disposed of for the benefit of such tribes.

**CLASSES OF ENTRIES.**

3. Original entries made under the provisions of the Act or validated and confirmed thereby.

(a) Section 1 of the Act provides that from and after its passage, the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws, by actual settlers only, the desert-land law, selection under section 4 of the Act approved August 18, 1894, known as the Carey Act, and to withdrawal under the Act approved June 17, 1902, known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining



or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; but that no desert-land entry made under the provisions of this Act shall contain more than 160 acres, and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the Act approved February 19, 1909, entitled "An Act to provide for an enlarged homestead."

Section 2 of the Act provides that any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section 4 of the Act of August 18, 1894, known as the Carey Act, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said Acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this Act.

With reference to homestead entries made under the provisions of this Act, attention is called to the fact that the said Act of February 19, 1909 (subject to which, as to residence and cultivation, such homestead entries must be made), provides that "no entry made under this Act shall be commuted" (35 Stat., 639). This, then, requires a residence for the full period of five years to entitle the homesteader to patent thereunder. The latter Act also provides that in addition to the proofs and affidavits required under section 2291 of the Revised Statutes the entryman shall prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops, other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

(b) Non-mineral entries, selections, or locations initiated prior to the passage of the Act.

In the proviso to section 1 it is enacted that those who have initiated non-mineral entries, selections, or locations in good faith, prior to the passage of this Act, on lands withdrawn or classified as coal lands, may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

Upon receipt of these instructions, Registers and Receivers will promptly advise, by registered mail, all those who have initiated non-mineral entries, selections, or locations, prior to the passage of this Act, on lands withdrawn or classified as coal lands prior to entry, selection, or location, which have not been restored to entry under the general land laws, that they may perfect such non-mineral entries, selections or locations (if made in good faith) under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this Act, unless the lands are restored to entry under the general land laws prior to final action upon such entries, selections, or locations, or unless, within thirty days from receipt of such notice, in cases where final proofs have been made, or prior to final proof where such proofs

have not been submitted, they submit evidence, preferably the sworn statements of experts or practical miners, that the land is, in fact, not coal in character, together with an application for classification, if the land is merely withdrawn, or for reclassification if classified as coal land. The application and evidence will be by you transmitted to this office and follow the procedure prescribed in section 5, paragraph 2, of these instructions.

#### NOTICE TO CHIEF OF FIELD DIVISION.

4. Nothing herein shall change the procedure of forwarding to the proper Chief of Field Division and the proper officers in charge of the national forest (if in such a forest) a copy of all applications to make final proof, final entry, or to purchase public lands, for the indorsement of "protest" or "no protest," as provided for in the circular of April 24, 1907, paragraph 5 et seq., except that where the only charge against the same in the office of the Chief of Field Division is that the land is coal in character, it will be unnecessary for him to protest same or make investigation, in view of the provisions of the Act.

#### HEARING TO DISPROVE CLASSIFICATION.

5. The last proviso to section 3 of the Act provides that nothing in the Act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

Except in the case of those who present applications under section 2 of the Act, you will advise any person presenting a non-mineral application or filing for lands classified as coal lands that he will be allowed thirty days in which to submit evidence, preferably the sworn statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. Such applications will be given proper serial numbers and notation thereof made upon the records, and when accompanied by the necessary evidence they will be forwarded to the General Land Office for action, where, if upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the non-mineral application, in the absence of other objections, will be returned for allowance. If reclassification be denied, the applicant may, within thirty days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the Act.

#### DISPOSAL OF COAL DEPOSITS.

6. Right to Prospect for Coal—Bond to Be Filed.—By section 3 of the Act it is provided that upon satisfactory proof of full com-



pliance with the provisions of the laws under which entry is made, and of this Act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Said section 3 also provides that any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this Act, for the purpose of prospecting for coal thereon upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting; and that any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages.

As a condition precedent to the exercise of the right mentioned in this Act to prospect for coal, the person desiring so to prospect must file in the office of the Commissioner of the General Land Office, for submission to the Secretary of the Interior for his approval, a bond or undertaking to indemnify the non-mineral claimant in lawful possession under this Act from all damages that may accrue to the latter's crops and improvements on such lands by reason of such prospecting, the right to prospect to date from receipt of notice of approval of the bond. There must be filed with such bond evidence of service of a copy thereof upon the non-mineral claimant. The bond must be executed by the prospector as principal, with two competent sureties or a bond company that has complied with the provisions of the Act of August 13, 1894 (28 Stat., 289), as amended by the Act approved March 23, 1910 (36 Stat., 241), in the sum of \$1,000, as per form hereto annexed. Coal declaratory statements for and application to purchase the coal deposits in lands entered, selected, or withdrawn under the Reclamation Act, as provided in section 2 of Act, will be received and filed at any time after such entry or selection has been received and allowed of record or such withdrawal has become a matter of record in your office; coal declaratory statements for and applications to purchase the coal deposits in those lands embraced in non-mineral entries, selections, or locations made in good faith, described in, and protected by, the proviso in section 1 of the Act, will be accepted and filed after it shall have been determined and become a matter of record in your office that such non-mineral entryman, selector, or locator shall receive the limited patent, prescribed in the act: Provided always, That such lands, or the coal deposits therein, have then been restored to disposition under the coal-land laws and the regulations in force.

## APPLICATIONS, CERTIFICATES, AND PATENTS.

7. (a) Entries and selections under the provisions of this Act must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to you, the following:

Application made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910 (36 Stat., 583). (See Amendment, page —.)

Like notation will be made by you across the face of the notice of allowance (Form 4-279) issued on applications to enter or select lands under the provisions of this Act. (Amendment of September 27, 1910.)

The Secretary of the Interior in withdrawing, under the Reclamation Act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said Acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910, *supra*.

(b) You will cause to be stamped on the final certificates issued to non-mineral claimants under this Act—

Patent to contain provisions, reservations, conditions, and limitations of Act of June 22, 1910 (36 Stat., 583).

There will be incorporated in patents issued to non-mineral claimants under this Act the following:

Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of June 22, 1910 (36 Stat., 583).

Immediately upon the notation upon your records of the filing and allowance of an entry, Carey Act selection, or a reclamation withdrawal under section 2 of the Act, and upon the ascertainment (which will be noted of record) that the non-mineral entryman, selector, or locator mentioned in and protected by the proviso in section 1 of the Act shall receive the limited patent prescribed therein, you will stamp on the tract book, on the same line with the entry and as near the descriptions as practicable, "Coal reserved to the United States, Act of June 22, 1910." You will also write on the margin of the plat, under the heading, "Coal reserved to the United States, Act of June 22, 1910," the description of the land in which the coal deposit has been reserved.

(c) Coal declaratory statements, applications to purchase, certificates, and patents issued under the provisions of this Act will describe the coal within legal subdivisions, and payment will be made at the price fixed for the whole acreage. Coal declaratory statements and applications to purchase under sections 2347-2352, Revised Statutes, for coal deposits disposable under this Act, must have noted across the face of same, before such coal declaratory statements or applications to purchase are signed by the coal claimants and presented to you, the words—

Patent will convey only the coal in the land and rights incident thereto in accordance with the conditions and limitations of the Act of June 22, 1910 (36 Stat., 583).



You will make like notation on each coal entry, final certificate, and notice of allowance issued by you for coal deposits disposable under this Act. (Amendment of September 27, 1910.)

There will be incorporated in patents to coal claimants for coal deposits disposed of under this Act substantially the following words:

Now know ye, that there is, therefore, pursuant to the law aforesaid, hereby granted by the United States unto the said grantee and to the heirs or successors and assigns of said grantee all the coal and the coal deposits in the land above described, together with the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions of and subject to the limitations of the Act of June 22, 1910 (36 Stat., 583), entitled "An Act to provide for agricultural entries of coal lands."

Protests, contests, appeals, and other proceedings arising under these regulations and the Act shall be allowed and disposed of in accordance with the Rules of Practice.

Fred Dennett,  
Commissioner.

Approved:  
Frank Pierce,  
Acting Secretary.

#### FORM OF BOND.

[Approved by Department, September 8, 1910.]

(Under Act of June 22, 1910, 36 Stat., 583.)

Know All Men by These Presents, That I \_\_\_\_\_ of \_\_\_\_\_ (or we \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, as the case may be), a citizen (or citizens) of the United States, or having declared my (or our) intention to become a citizen (or citizens) of the United States, and never having held or purchased lands from the United States under the coal-land laws, either as an individual or as a member of an association, as principal (or principals), and \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, as sureties, are held and firmly bound unto \_\_\_\_\_, his heirs, executors, administrators, or assigns, in the full sum of one thousand dollars (\$1,000), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, and each and every one of us and them, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this \_\_\_\_\_ day of \_\_\_\_\_, 191—.

The Condition of This Obligation Is Such, That whereas the above bounden \_\_\_\_\_ is desirous of entering upon the \_\_\_\_\_, section \_\_\_\_\_, township \_\_\_\_\_, range \_\_\_\_\_, land district \_\_\_\_\_, for the purpose of prospecting for coal thereon under the provisions of the Act of June 22, 1910 (36 Stat., 583); and, whereas, the above-named \_\_\_\_\_ is the lawful claimant of said land,

Now, Therefore, If the said above bounden parties, or either of them, or the heirs of either of them, their executors or administrators, upon demand, shall make good and sufficient recompense, satisfaction, and payment unto the said claimant, his heirs, executors or administrators, or assigns, for all such damages to the crops and improvements on said lands as the said claimant, his heirs, executors, administrators, or assigns shall suffer or sustain by reason of his, the above bounden principal's, prospecting for coal on said described land, then this obligation shall be null and void; otherwise the same shall remain in full force and effect.

Principal.

Signed and sealed in the presence of and witnesses by, the undersigned:  
Residence \_\_\_\_\_

Residence _____	Residence _____ Surety.
Residence _____	Residence _____ Surety.

#### An Act to Provide for Agricultural Entries on Coal Lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act unreserved public lands of the United States exclusive of Alaska which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert-land law, to selection under section four of the Act approved August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and to withdrawal under the Act approved June seventeenth, nineteen hundred and two, known as the Reclamation Act, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. But no desert entry made under the provisions of this Act shall contain more than one hundred and sixty acres, and all homestead entries made hereunder shall be subject to the conditions, as to residence and cultivation, of entries under the Act approved February nineteenth, nineteen hundred and nine, entitled "An Act to provide for an enlarged homestead:" Provided, That those who have initiated nonmineral entries, selections, or locations in good faith prior to the passage of this Act, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this Act.

Sec. 2. That any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section four of the Act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view of securing or passing title to the same in accordance with the provisions of said Acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of this Act.

Sec. 3. That upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this Act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the lands so patented, together with the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this Act, for the purpose of prospecting for coal thereon upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: Provided, That the owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: Provided further, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of application to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

Approved, June 22, 1910 (36 Stat. L., 583).

Department of the Interior,  
General Land Office,



Washington, D. C., September 27, 1910.

Amendment to circular of September 8, 1910, of instructions under the Act approved June 22, 1910 (36 Stat., 583), "To provide for agricultural entries on coal lands."

Registers and Receivers,

United States Land Offices.

Sirs: The circular approved September 8, 1910, of instructions under the Act of June 22, 1910 (36 Stat., 583), entitled "An Act to provide for agricultural entries on coal lands," is hereby amended by striking out the second sentence of section 7, paragraph (a), thereof, and substituting therefor the following:

Like notation will be made by you across the face of the notice of allowance (Form 4-279) issued on applications to enter or select lands under the provisions of this Act.

Also by striking out the second sentence of paragraph (c) of said section 7, and substituting in lieu thereof the following:

You will make like notation on each coal entry final certificate, and notice of allowance issued by you for coal deposits disposable under this Act.

Very respectfully,

Fred Dennett, Commissioner.

Approved, September 27, 1910:

Frank Pierce, Acting Secretary.

[In Reply Please Refer to Circular No. 79.]

Department of the Interior,  
General Land Office,

Washington, February 8, 1912.

Instructions Under the Acts of March 3, 1909 (35 Stat., 844), and June 22, 1910 (36 Stat., 583).

Registers and Receivers,

United States Land Offices.

Sirs: The purpose of this circular is to impress upon you the necessity for a careful review of the circulars of September 7, 1909 (38 L. D., 183), and September 8, 1910 (39 L. D., 179), relating respectively to the Acts of March 3, 1909, and June 22, 1910, providing for the granting of surface title to coal lands, it being apparent that there exists considerable misunderstanding as to the effect and distinguishing features of said Acts.

The following general suggestions will be found helpful:

(1) Where an entry, selection, or location is made upon lands subsequently classified, claimed, or reported as being valuable for coal, the entryman, selector, or locator, having submitted satisfactory proof of compliance with the laws under which he claims, may elect, upon the form provided, to accept a patent containing a reservation to the United States of all coal in the lands. (See circular of September 7, 1909.)

(2) Where an entry, selection, or location was made prior to June 22, 1910, upon lands which at the time of the initiation of such entry, selection, or location, were classified, claimed, or reported as valuable for coal, the claimant may perfect title under the provisions of the law under which his claim was initiated, but shall receive the limited patent provided for by Sec. 3 of the Act of June 22, 1910. There is no right of election in such cases and you should not accept elections as in case of entries coming within the provisions of the Act of March 3, 1909. The procedure in cases of this kind is set out in paragraph 3b, of the circular of September 8, 1910. The claimant may join issue as to the character of the land or may waive that right. Should he file such waiver or default after proper notice, the limited patent will issue in the absence of other objection, and in cases where the right to dispute the alleged coal character of the land is so waived or default made, upon the submission of satisfactory proof you should make proper notations on the final certificate and the records of your office.

(3) Since June 22, 1910, claims may be initiated with a view to acquiring surface title to lands which have been withdrawn or classified as coal lands or are valuable for coal, only in accordance with the provisions of the Act of that date. (See paragraph 3a, circular of September 8, 1910.)

It is believed that the foregoing, if carefully read in connection with the circulars referred to, will render it easy to determine whether the disposition of a case, where the coal question is involved, is governed by the Act of March 3, 1909, the Act of June 22, 1910, or the proviso to Sec. 1 of the latter Act, and

thus avoid the delay incurred by the necessity for supplemental action by this office.

Very respectfully,  
Fred Dennett, Commissioner.

## SECOND HOMESTEAD ENTRIES.

### Under Special Acts of Congress and Under Equitable Rule.

Second homestead entries may be made by the following classes of persons, if they are otherwise qualified to make entry:

(a) By a former entryman who commuted his entry prior to June 5, 1900.

(b) By a homestead entryman who, prior to May 17, 1900, paid for lands to which he would have been afterwards entitled to receive patent without payment under "Free Homestead Act."

(c) By any person whose former entry was made prior to February 3, 1911, which entry has been specifically lost, forfeited or abandoned for any cause, provided the former entry was not canceled for fraud or relinquished or abandoned for a valuable consideration in excess of the filing fees paid on said former entry. If an entryman received for relinquishing or abandoning his entry an amount in excess of the fees and commissions paid to the United States at the time of making said entry, or if he sells his improvements for a sum in excess of said filing fees and relinquishes his entry in connection therewith, he can not make a second entry.

(d) By persons whose original entries have failed because of the discovery, subsequent to entry, of obstacles which could not have been foreseen, and which render it impracticable to cultivate the land, or because, subsequent to entry, the land becomes useless for agricultural purposes through no fault of the entryman. There is no specific statute authorizing the making of second entries and these classes of cases, and such entries are allowed under the general equitable power of the Land Department to grant relief in cases of accident and mistake.

(e) Any person who has already made final proof for less than 160 acres under the homestead laws, may, if he is otherwise qualified, make a second or additional entry for such an amount of public land as will, when added to the amount for which he has already made proof, not to exceed in the aggregate 160 acres.

See Enlarged Homestead Act, and instructions thereunder. Also Three-Year Homestead law, pages 303 to 311.

(f) Any person desiring to make a second entry must first select and inspect the lands he intends to enter, and then make application therefor on blanks furnished by the Register and Receiver. Each application must state the date and number of the former entry and the Land Office at which it was made, or give the section, township, and range in which the land entered was located. Any person coming within paragraphs (a), (b) or (e), above, must state the date when and how the former entry was perfected. Any person coming within paragraph (c) above, must show, by an oath of himself and some other person or persons, the time when his former entry was lost, forfeited or abandoned; that it was not cancelled for fraud; and the consideration, if any, received for the abandonment or relinquishment.

Any person mentioned in paragraph (d), above, must, in addition to the above evidence as to date and description of his former



entry, date of abandonment, and receipt of consideration, show, by duly corroborated affidavits, the grounds on which he seeks relief and that he used due diligence prior to entry to avoid any mistake.

(g) A person who has made and lost, forfeited, or abandoned an entry of less than 160 acres is not entitled to make another entry unless he comes within paragraph (c) or (d) above. Such a person can not make another entry merely because his first entry contained less than 160 acres.

(14) An additional homestead entry may be made by a person for such an amount of public lands adjoining lands then held and resided upon by him under his original entry as will, when added to such adjoining lands, not exceed in the aggregate 160 acres. An entry of this kind may be made by any person who has not acquired title to and is not, at the date of his application, claiming under any of the agricultural land laws, other settlement or entry made since August 30, 1890, and other lands, which, with the land then applied for, would exceed in the aggregate 320 acres, but the applicant will not be required to show any of the other qualifications of a homestead entryman. (See Enlarged Homestead Act and instructions thereunder, page 317; also Three-Year Homestead Law, pages 303-311.)

An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres, but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. (See also Reclamation Homesteads, page 171.)

#### **EQUITABLE RULE.**

As stated under subdivision (d) of the title Second Homesteads, a second homestead may be made where the original entry failed because of the discovery subsequent to entry, of obstacles which could not have been foreseen and which render it impracticable to cultivate the land, or because, subsequent to entry the land becomes useless for agricultural purposes through no fault of the entryman. This class of entries are allowed under the general equitable power of the Land Department to grant relief in cases of accident and mistake.

The Act of April 28, 1904, the Act of February 8, 1908, and the Act of February 3, 1911, are very similar in their provisions. These Acts did not divest the Department of its equitable powers to grant relief as above indicated on the ground of accident or mistake.

By decision of the Department in the case of Maraduke William Matthews, 38 L. D., 406, the rule announced in the case of Finsans Frhardt, 36 L. D., 154, paragraph 9 of the Instructions of June 11, 1907, 35 L. D., 590, and paragraph 8 of Instructions, February 29, 1908, 36 L. D., 291, which held to the contrary view, were overruled.

In the Maraduke case (38 L. D.) it is said, on page 408:

"Accident and mistake are inevitable in human affairs. The object of Congress and the object of the citizen in accepting its offer must sometimes fail of accomplishment through no fault of the entryman. The Land Department

having all and sole jurisdiction to administer the Act, necessarily had power to grant relief in such case as any other tribunal would have in similar case to relieve from the hardships of accident and mistake. Equitable rights are within the jurisdiction of the Land Department to determine. *Brown v. Hitchcock*, 173 U. S., 473-8. It may relieve against unforeseen occurrences not provided for by express statutory provisions. *Williams v. U. S.*, 138 U. S., 514-24. The Land Department has been wont to exercise such powers from the earliest times. The rule of approximation is an example, express restrictive words as to area, that may be entered under various statutes being forced to yield, as to fractions of subdivisions to administrative necessity in order to effectuate the spirit and purpose of the land laws. Instructions 31 L. D., 225."

It is further said on page 409 of the opinion:

"This salutary and eminently equitable rule is not taken away by the Act of April 28, 1904, or of February 8, 1908, *supra*, or by any other Act of like or similar tenor and purpose. Those Acts are remedial merely. They show no purpose to take away salutary powers long exercised and exercised and existing from the organization of the Land Department. They are not Acts of limitation of power, but are grants of right in cases not within the ordinary and long exercised power of the Land Department. The instructions and decision in the *Finsans Erhardt* cite as authority for your decision, construing these acts to be limitations upon the power of the Land Department to grant relief in such cases, are clearly misconstructions of these relief acts and erroneous and will no longer be observed by your office.

The opinion concludes:

"The proofs satisfactorily show that the object of the homestead law and intent of Mathews in making his entry were defeated without his fault; that the entry was made by mistake as to the character of the land, which was utterly worthless and incapable of cultivation or to be improved and made a home. He never, in fact, intelligently exercised his homestead right and it will be recognized by your office as not exercised and not exhausted by his ill judged and futile attempt. If no other objection exists his application will be allowed."

(*Marmaduke William Mathews*, 38 L. D., 406. See also in this connection the case of *Moritz v. Hinz*, 37 L. D., 382).

By a comparison of the Act of April 28, 1904, February 8, 1908, and February 11, 1911, it will be observed that the Act of February 3, 1911, is a substantial re-enactment of the other two laws without specification as to grounds for second entry, with the additional provision that the benefits of the law should not be extended to those who relinquished their entry for valuable consideration in excess of the filing fees, paid by him on his original entry. It is, therefore, apparent that Congress did not divest the Department of its equitable powers to grant relief in such cases.

In the *Moritz-Hinz* case quoted, the Secretary said:

"Further, if the allegations set forth in *Moritz* patent, filed in support of his application for second entry, be true, he has never, in fact, enjoyed the privileges intended to be extended under the homestead laws. In July, 1905, he made his first entry after visiting and examining the land and judging it to be cultivable. Subsequently he found it was the bed of a lake, free from water only in dry weather, and he was unable to cultivate it. He had never improved or lived on it, having found it impossible to do so. He entered the land in good faith and relinquished it without consideration. Such statement, if true, rendered the land uninhabitable and uncultivable, so that the object of the homestead law was effectually defeated and he has not in fact had an entry under the homestead law. Departmental decision of June 1st, 1908, *supra*, holding otherwise, is vacated and recalled, nor is it necessary now to order a hearing on *Hinz* protest and application." . . .

The following instruction was issued by the General Land Office on March 29, 1910, concerning this subject,



## "SECOND HOMESTEAD ENTRIES.

### Instructions.

Department of the Interior,  
General Land Office,  
Washington, D. C., March 29, 1910.

Registers and Receivers, United States Land Office.

Gentlemen: Under date of February 1st, 1910, in the case of Maraduke William Mathews (38 L. D., 406) the Department held that the Act of February 8, 1908 (35 Stat., 6), was not a limitation of the equitable powers of the Land Department to grant relief in cases of accident and mistake. Second entries will, therefore, be allowed by this office, although the applicant does not come within the Act of February 8, 1908, *supra*, when it satisfactorily appears that obstacles which could not have been foreseen and which render it impracticable to cultivate the land, are discovered subsequent to entry, or where, subsequent to entry, and through no fault of the entryman, the land becomes useless for agricultural purposes. When an application is presented which can be allowed under any Act of Congress, you will allow the same as you are required to do under the present regulations. When an application is presented which does not come within the purview of any Act of Congress, you will not reject the same, but will make the proper notations on your records, and forward the application to this office, with appropriate recommendations.

Paragraphs 6 and 8 of circular of February 29, 1908 (36 L. D., 291), are accordingly modified.

Very respectfully,

Fred Dennett, Commissioner.

Approved:

R. A. Ballinger, Secretary."

Persons applying to make entry of lands under this rule are required to present their evidence, duly corroborated, showing the nature of the mistake or accident, the character of the land, how the mistake was made, what facts render the land uninhabitable and unfit for cultivation, when the mistake was discovered, what precautions, if any, were employed to avoid accident and mistake, in fact the affidavit should contain a complete statement of all the facts and circumstances surrounding the examination of the land before entry thereof.

In addition to the cases cited, the rule has been invoked in the following cases:

"A second homestead entry is permissible, where the first is made in good faith, where the land covered thereby is uninhabitable on account of the non-potable character of the water obtained thereon."

"Where the right to make a second rests on the non-inhabitable character of the land covered by the first, the facts as to the nature and condition of both tracts should be clearly set forth." (William E. Jones, 9 L. D., 207.)

"The inability of the entryman to secure water fit for domestic use on the first entered is a sufficient cause for the allowance of the second, if due diligence and good faith are made apparent." (Chas. F. Babcock, 9 L. D., 333.)

"A second homestead entry may be allowed, where the land embraced in the first does not afford a supply of water fit for domestic use, and the entryman does not appear to have been wanting in diligence or good faith." (Louis Wilson, 21 L. D., 391.)

"The right to make a second homestead entry may be recognized where the first was cancelled on account of the entryman's failure to establish residence, and such failure was due to circumstances beyond his control." (Chas. A. Garrison, 22 L. D., 179.)

"The right to make a second homestead entry may be accorded

to one who in good faith relinquishes the first on account of an adverse claim asserted to the land included therein." (Anna Lee, 24 L. D., 531.)

"The right to make a second may be recognized where the first through mistake was not made for the land intended, and was accordingly relinquished." (Bohun v. Brest, 24 L. D., 16.)

"A second entry will not be allowed on account of the worthless character of the land covered by the first, if such entry was made without examination of the land." (Alix Heipfner, 26 L. D., 23.)

"The right to make a second entry will not be accorded to one who relinquishes his prior entry on account of a money consideration or its equivalent." (North Perry Townsite et al. v. Malone, 23 L. D., 87.)

"Permission to make a second homestead entry may be accorded where there is no adverse claim, and the first is relinquished on account of the worthless character of the land, and the applicant, under the circumstances, is not chargeable with negligence in the premises." (John Herkowski, 28 L. D., 259.)

In cases where obstacles which could not have been foreseen and render it impracticable to cultivate the land are discovered subsequent to entry, such as the impossibility of obtaining water by digging wells or otherwise, or where subsequent to entry and through no fault of the homesteader, the lands become useless for agricultural purposes, as would the deposit of tailings in the channel of a stream, a dam is formed, causing the waters to overflow, entry may, in the discretion of the Commissioner of the General Land Office be cancelled and a second entry allowed; but in the event of a new entry the party will be required to show the same compliance with law in connection therewith as though he had not made a previous entry and must pay the proper fees and commissions on the same. (See page 19, Circular January 25, 1904.)

#### **SPECIAL STATUTES.**

Several statutes of special character have been enacted having a local application, viz.: Statutes of March 2, 1889 (25 Stat. L., 1004, Secs. 12, 13, 14 and 15; February 13, 1893 (27 Stat. L., 563), in reference to certain Indian lands in Oklahoma; September 29, 1890 (26 Stat. L., 496), in reference to certain forfeited railroad lands; March 3, 1891 (26 Stat. L., 1043), in reference to Crow Indian lands in Montana, and June 6, 1900 (31 Stat. L., 672-680), with reference to Comanche, Kiowa and Apache lands in Oklahoma Territory; as well as Acts opening Sioux Rosebud, Flathead, Coeur d'Alene, Colville, Yakima, Umatilla, Fort Peck, Fort Belknap, Fort Berthold, Cheyenne, Shoshone and other Indian reservations and lands, and the Act of June 11, 1906, relating to homestead entries within national forests.

These statutes make the exception in favor of parties who have made entries prior to the respective dates of approval thereof, leaving the rule to operate unimpaired with respect to cases thereafter arising.

For Act February 3, 1911, see page 531.

#### **SUGGESTIONS TO HOMESTEADERS AND PERSONS DESIRING TO MAKE HOMESTEAD ENTRIES.**

1. Information necessary to persons desiring to make entry.
2. Kind of land subject to homestead entry.
3. How claims under the homestead law originate.
4. Settlements made under the homestead laws.
5. Soldiers' and sailors' declaratory statements.
6. By whom homestead entries may be made.
7. When a married woman may make a homestead entry.



8. Right of wife of entryman to contest entry.
  9. Right of minor children to make proof on entry.
  10. Marriage of entrywoman after entry.
  11. Entry by widow.
  12. Entry by soldier or sailor.
  13. By whom second homestead entries may be made.
  14. Amount of land in additional entry.
  15. Qualifications for adjoining farm entry.
  16. How homestead entries are made.
  17. Applications and affidavits.
  18. Applications to make second homestead entries.
  19. Preferred right of entry.
  20. Applications by soldiers or sailors.
  21. Rights of widows, heirs, or devisees under the homestead laws.
  22. Final proof by widow.
  23. Right of heirs of contestant to make entry.
  24. Entry by widow or heirs of soldiers of War of Rebellion, Spanish-American War, or Philippine insurrection.
  25. Residence and cultivation.
  26. Amount of cultivation and improvements required.
  27. Actual residence.
  28. Residence and cultivation by soldiers and sailors.
  29. Residence by sailor or soldier during enlistment.
  30. Residence and cultivation by widows and minor children of soldiers and sailors.
  31. Residence and cultivation by widow or heirs of settlers.
  32. Cultivation of entry by widow or heirs of entryman.
  33. Residence by entrymen elected to Federal, State, or county office.
  34. Residence on land covered by adjoining farm entry.
  35. Residence and cultivation by insane entryman.
  36. Leaves of absence.
  37. Commutation of homestead entries.
  38. Homestead final and commutation proof.
  39. By whom proof may be offered.
  40. How proofs may be made.
  41. Publication fees.
  42. Duty of officers before whom proofs are made.
  43. Fees and commissions.
  44. Alienation.
  45. Relinquishments.
  46. Enlarged homestead entries; kind of land subject to entry.
  47. Designation of lands.
  48. Compactness; fees.
  49. Form of application.
  50. Additional entries.
  51. Final proof on original and additional entries; commutation not allowed.
  52. Right of entry.
  53. Constructive residence on certain lands in Utah.
  54. Constructive residence permitted on certain lands in Idaho.
  55. Officers before whom applications and proofs may be made.
- Appendix No. 1, page 342; No. 2, page 344; No. 3, page 345; No. 4, page 346; No. 5, page 348; No. 6, page 348; No. 7, page 348; No. 8, page 353; No. 9, page 337; No. 10, page 348; No. 11, page 337; No. 12, page 337; No. 13, page 337; No. 14, page 348; No. 15, page 337.

#### LIST OF UNITED STATES LAND OFFICES.

The General Land Office does not issue maps showing the location of vacant public land subject to entry. This information can be reliably obtained only from the records of the various district land offices, which are located as follows:

Alabama:	Arizona:	California:	California—Cont.
Montgomery.	Phoenix.	Eureka.	San Francisco.
Alaska:	Arkansas:	Independence.	Susanville.
Fairbanks.	Camden.	Los Angeles.	Visalia.
Juneau.	Harrison.	Redding.	Colorado:
Nome.	Little Rock.	Sacramento.	Del Norte.

Colorado—Cont.	Minnesota—Cont.	New Mexico:	South Dakota:
Denver.	Crookston.	Clayton.	Bellefourche.
Durango.	Duluth.	Fort Sumner.	Chamberlain.
Glenwood Sp'gs.	Mississippi:	Las Cruces.	Gregory.
Hugo.	Jackson.	Roswell.	Lemmon.
Lamar.	Missouri:	Santa Fe.	Pierre.
Leadville.	Springfield.	Tucumcari.	Rapid City.
Montrose.	Montana:	North Dakota:	Timber Lake.
Pueblo.	Billings.	Bismarck.	Utah:
Sterling.	Bozeman.	Devils Lake.	Salt Lake City.
Florida:	Glasgow.	Dickinson.	Vernal.
Gainesville.	Great Falls.	Fargo.	Washington:
Idaho:	Havre.	Minot.	North Yakima.
Blackfoot.	Helena.	Williston.	Olympia.
Boise.	Kalispell.	Oklahoma:	Seattle.
Coeur d'Alene.	Lewistown.	Guthrie.	Spokane.
Hailey.	Miles City.	Lawton.	Vancouver.
Lewiston.	Missoula.	Woodward.	Walla Walla.
Kansas:	Nebraska:	Oregon:	Waterville.
Dodge City.	Alliance.	Burns.	Wisconsin:
Topeka.	Broken Bow.	La Grande.	Wausau.
Louisiana:	Lincoln.	Lakeview.	Wyoming:
Baton Rouge.	North Platte.	Portland.	Buffalo.
Michigan:	O'Neill.	Roseburg.	Cheyenne.
Marquette.	Valentine.	The Dalles.	Douglas.
Minnesota:	Nevada:	Vale.	Evanston.
Cass Lake.	Carson City.		Lander.
			Sundance.

No specific descriptions of the character of the land, climate, water, or timber can be given by the General Land Office.

Unoccupied public lands, subject to settlement and entry, are to be found in all the States and Territories west of the Mississippi River, except Iowa and Texas. There is also considerable vacant public land in the States of Michigan, Florida, Alabama, and Mississippi.

Persons who desire to make homestead entry should first decide where they wish to locate, then go or write to the local land office of the district in which the lands are situated, and obtain from the records diagrams of vacant lands.

A personal inspection of the lands should be made to ascertain if they are suitable, and, when satisfied on this point, entry can be made at the local land office in the manner prescribed by law, under the direction of the local land officers, who will give the applicant full information. Should a person desire to obtain information in regard to vacant lands in any district before going there for personal inspection, he should address the register and receiver of the particular local land office, who will give such information as is available. The local land officers can not, however, be expected to furnish extended lists of vacant lands subject to entry, except through township plats, which they are authorized to sell as hereinafter explained.

[Circular No. 10.]

## **SUGGESTIONS TO HOMESTEADERS AND PERSONS DESIRING TO MAKE HOMESTEAD ENTRIES.**

Department of the Interior,  
General Land Office,  
Washington, D. C., April 20, 1911.

1. Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

As each applicant is required to swear that he is well acquainted



with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the affidavit that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

Information as to whether a particular tract of land is subject to entry may be obtained from the Register or Receiver of the land district in which the tract is located, either through verbal or written inquiry, but these officers must not be expected to give information as to the character and quality of unentered land or to furnish extended lists of lands subject to entry, except through plats and diagrams which they are authorized to make and sell as follows:

For a township diagram showing entered land only.....	\$1.00
For a township plat showing form of entries, names of claimants, and character of entries .....	2.00
For a township plat showing form of entries, names of claimants, character of entry, and number.....	3.00
For a township plat showing form of entries, names of claimants, character of entry, number, and date of filing or entry, together with topography, etc. ....	4.00

Purchasers of township diagrams are entitled to definite information as to whether each smallest legal subdivision, or lot, is vacant public land. Registers and Receivers are therefore required in case of an application for a township diagram showing vacant lands to plainly check off with a cross every lot or smallest legal subdivision in the township which is not vacant, leaving the vacant tracts unchecked. There is no authority for Registers and Receivers to charge and receive a fee of 25 cents for plats and diagrams of a section or part of a section of a township.

If because of the pressure of current business relating to the entry of lands Registers and Receivers are unable to make the plats or diagrams mentioned above, they may refuse to furnish the same and return the fee to the applicant, advising him of their reason for not furnishing the plats requested, that he may make the plats or diagrams himself, or have same made by his agent or attorney, and that he may have access to the plats and tract books of the local land office for this purpose, provided such use of the records will not interfere with the orderly dispatch of the public business.

A list showing the general character of all the public lands remaining unentered in the various counties of the public-land States on the 30th day of the preceding June may be obtained at any time by addressing "The Commissioner of the General Land Office, Washington, D. C."

All blank forms of affidavits and other papers needed in making application to enter or in making final proofs can be obtained by applicants and entrymen from the land office for the district in which the land lies.

2. Kind of Land Subject to Homestead Entry.—All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character and are not occupied for the purposes of trade or business and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city, but homestead entries on lands within certain areas (such as lands in Alaska, lands withdrawn

under the Reclamation Act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classified, or valuable for coal) are made subject to the particular requirements of the laws under which such lands are opened to entry. None of these particular requirements are set out in these suggestions, but information as to them may be obtained by either verbal or written inquiries addressed to the Register and Receiver of the land office of the district in which such lands are situated.

### **How Claims Under the Homestead Law Originate.**

3. Claims under homestead laws may be initiated either by settlement on surveyed or unsurveyed lands of the kind mentioned in the foregoing paragraph, or by the filing of a soldier's or sailor's declaratory statement, or by the presentation of an application to enter any surveyed lands of that kind.

4. Settlements may be made under the homestead laws by all persons qualified to make either an original or a second homestead entry, as explained in paragraphs 6 and 13, and in order to make settlement a settler must personally go upon and improve or establish residence on the land he desires. By making settlement in this way the settler gains the right to enter the land settled upon as against all other persons, but not as against the Government should the land be withdrawn by it for other purposes.

A settlement made on any part of a surveyed technical quarter section gives the settler the right to enter all of that quarter section which is then subject to settlement, although he may not place improvements on each 40-acre subdivision; but if the settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter section he should perform some act of settlement—that is, make some improvement—on each of the smallest legal subdivisions desired. When settlement is made on unsurveyed lands, the settler must plainly mark the boundaries of all the lands claimed by him.

The settlement must be made by the settler in person, and can not be made by his agent, and each settler must within a reasonable time after making his settlement, establish and thereafter continuously maintain an actual residence on the land, and if he fails to do this, or, in case of his death, his widow, heirs, or devisees fail to continue cultivation or residence, or if he, or his widow, heirs, or devisees, fail to make entry within three months from the time he first settles on surveyed land, or within three months from the filing in the local land office of the plat of survey of unsurveyed lands on which he made settlement, the right of making entry of the lands settled on will be lost in case of an adverse claim, and the land will become subject to entry by the first qualified applicant.

5. Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any persons who have been honorably discharged after ninety days' service in the Army or Navy of the United States during the War of the Rebellion or during the Spanish-American War or the Philippine insurrection. Declaratory statements of this character may be filed either by the soldier or sailor in person or through his agent acting under a proper power of attorney, but the soldier or



sailor must make entry of the land in person, and not through his agent, within six months from the filing of his declaratory statement, or he may make entry in person without first filing a declaratory statement if he so chooses. If a declaratory statement is filed by a soldier or sailor in person, it must be executed by him before one of the officers mentioned in paragraph 16, in the county or land district in which the land is situated; if filed through an agent, the affidavit of the agent must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer using a seal and authorized to administer oaths and not necessarily within the county or land district in which the land is situated.

#### **By Whom Homestead Entries May Be Made.**

6. Homestead entries may be made by any person who does not come within either of the following classes:

- (a) Married women, except as hereinafter stated.
- (b) Persons who have already made homestead entry, except as hereinafter stated.
- (c) Foreign-born persons who have not declared their intention to become citizens of the United States.
- (d) Persons who are the owners of more than 160 acres of land in the United States.
- (e) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs, as hereinafter mentioned, or who have served in the Army or Navy during the existence of an actual war for at least 14 days.

(f) Persons who have acquired title to or are claiming, under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. See, however, modification hereof in the regulations concerning enlarged homestead entries (par. 52).

7. A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

- (a) Where she has been actually deserted by her husband.
- (b) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.
- (c) Where the husband is confined in a penitentiary and she is actually the head of the family.
- (d) Where the married woman is the heir of a settler or contestant who dies before making entry.
- (e) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time she applies to make entry.

8. If an entryman deserts his wife and abandons the land covered by his entry, his wife then has the exclusive right to contest the entry if she has continued to reside on the land, and on securing its cancellation she may enter the land in her own right, or she may continue her residence and make proof in the name of and as the agent for her husband, and patent will issue to him.

9. If an entryman deserts his minor children and abandons his

entry after the death of his wife, the children have the same right to make proof on the entry as the wife could have exercised had she been deserted during her lifetime.

10. The marriage of the entrywoman after making entry will not defeat her right to acquire title if she continues to reside upon the land and otherwise comply with the law. A husband and wife can not, however, maintain separate residences on homestead entries held by each of them, and if, at the time of marriage, they are each holding an unperfected entry on which they must reside in order to acquire title, they can not hold both entries. In such case they may elect which entry they will retain and relinquish the other.

11. A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

12. A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing on the lands applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged.

13. Second homestead entries may be made by the following classes of persons if they are otherwise qualified to make entry:

(a) By a former entryman who commuted his entry prior to June 5, 1900.

(b) By a homestead entryman who, prior to May 17, 1900, paid for lands to which he would have been afterwards entitled to receive patent without payment, under the "Free-Homes Act." (Appendix No. 3.)

(c) By any person whose former entry was made prior to February 3, 1911, which entry has been subsequently lost, forfeited, or abandoned for any cause, provided the former entry was not canceled for fraud or relinquishment or abandoned for a valuable consideration in excess of the filing fees paid on said former entry. If an entryman received for relinquishing or abandoning his entry an amount in excess of the fees and commissions paid to the United States at time of making said entry, or if he sells his improvements for a sum in excess of such filing fees and relinquishes his entry in connection therewith, he can not make a second entry.

(d) By persons whose original entries have failed because of the discovery, subsequent to entry, of obstacles which could not have been foreseen and which render it impracticable to cultivate the land, or because, subsequent to entry, the land becomes useless for agricultural purposes through no fault of the entryman. There is no specific statute authorizing the making of second entries in these classes of cases, and such entries are allowed under the general equitable power of the Land Department to grant relief in cases of accident and mistake.

(e) Any person who has already made final proof for less than 160 acres under the homestead laws may, if he is otherwise qualified, make a second or additional entry for such an amount of public land as will, when added to the amount for which he has already made proof, not exceed in the aggregate 160 acres. See, however, instructions under the Enlarged Homestead Act (par. 52).

(f) Any person desiring to make a second entry must first



select and inspect the lands he intends to enter and then make application therefor on blanks furnished by the Register and Receiver. Each application must state the date and number of the former entry and the land office at which it was made, or give the section, township, and range in which the land entered was located. Any person coming within paragraphs (a), (b), or (c) above must state the date when and how the former entry was perfected. Any person coming within paragraph (c) above must show, by the oath of himself and some other person or persons, the time when his former entry was lost, forfeited, or abandoned; that it was not canceled for fraud; and the consideration, if any, received for the abandonment or relinquishment.

Any person mentioned in paragraph (d) above must, in addition to the above evidence as to date and description of his former entry, date of abandonment, and receipt of consideration, show, by duly corroborated affidavit, the grounds on which he seeks relief, and that he used due diligence prior to entry to avoid any mistake.

(g) A person who has made and lost, forfeited, or abandoned an entry of less than 160 acres is not entitled to make another entry unless he comes within paragraph (c) or (d) above. Such a person can not make another entry merely because his first entry contained less than 160 acres.

14. An additional homestead entry may be made by a person for such an amount of public lands adjoining lands then held and resided upon by him under his original entry as will, when added to such adjoining lands, not exceed in the aggregate 160 acres. An entry of this kind may be made by any person who has not acquired title to and is not, at the date of his application, claiming under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the land then applied for, would exceed in the aggregate 340 acres, but the applicant will not be required to show any of the other qualifications of a homestead entryman. See, however, instructions under the Enlarged Homestead Act (par. 50).

15. An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto is not qualified to make an adjoining farm entry.

### **How Homestead Entries Are Made.**

16. A homestead entry may be made by the presentation to the land office of the district in which the desired lands are situated of an application properly prepared on blank forms prescribed for that purpose and sworn to before either the Register or the Receiver, or before a United States Commissioner, or a United States Court Commissioner, or a Judge, or a Clerk of a Court of record, in the county or parish in which the land lies, or before any officer of the classes named who resides in the land district and nearest and most accessible to the land, although he may reside outside of the county in which the land is situated.

17. Each application to enter and the affidavits accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent for any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made and will not make, any agreement or contract in any way or manner with any person or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

18. All applications to make second homestead entries must, in addition to the facts specified in the preceding paragraph, show the number and date of the applicant's original entry, the name of the land office where the original entry was made, and the description of the land covered by it, and it should state fully all the facts which entitle the applicant to make a second entry.

19. All applications by persons claiming as settlers must, in addition to the facts required in paragraph 17, state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry; that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States, or have declared their intentions to become such citizens, but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right, if he is otherwise qualified to do so.

20. All applications by soldiers, sailors, or their widows, or the guardians of their minor children should be accompanied by proper evidence of the soldier's or sailor's service and discharge, and of the fact that the soldier or sailor had not, prior to his death, made an entry in his own right. The application of the widow of the soldier or sailor must also show that she is unmarried, and that the right has not been exercised by any other person. Applications for the children of soldiers or sailors must show that the father died without having made entry, that the mother died or remarried without making entry, and that the person applying to make entry for them is their legally appointed guardian.



## RIGHTS OF WIDOWS, HEIRS, OR DEVISEES UNDER THE HOMESTEAD LAWS.

21. If a homestead settler dies before he makes entry, his widow has the exclusive right to enter the lands covered by his settlement. If there be no widow, the right to enter the lands covered by the settlement passes to the persons who are named as heirs of the settler by the laws of the State in which the land lies. If there be no widow or heirs the right to enter the lands covered by the settlement passes to the person to whom the settler has devised his rights by a proper will; but a devisee of the claim will not be entitled to take when there is a widow or an heir of the settler. The persons to whom the settler's right of entry passes must make entry within the time named in paragraph 4 or they will forfeit their right to the next qualified applicant. They may, however, make entry after that time if no adverse claim has attached.

22. If a homestead entryman dies before making final proof, his rights under his entry will pass to his widow; or if there be no widow, and the entryman's children are all minors, the right to a patent vests in them upon making publication of notice and proof of the death of the entryman without a surviving widow, that they are the only minor children and that there are no adults heirs of the entryman, or the land may be sold for the benefit of such minor children in the manner in which other lands belonging to minors are sold under the laws of the State or Territory in which the lands are located.

If the children of a deceased entryman are not all minors and his wife is dead, his rights under the entry pass to the persons who are his heirs under the laws of the State or Territory in which the lands are situated. If there be no widow or heirs of the entryman, the rights under the entry pass to the person to whom the entryman has devised his rights by proper will, but a devisee of the entry will be entitled to take only in the event there is no widow or heir of the entryman.

23. If a contestant dies after having secured the cancellation of an entry his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancellation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made to the same extent as would have been required of the contestant had he made entry.

No foreign-born persons can claim rights as heirs under the homestead laws unless they have become citizens of the United States or have declared their intentions to become citizens.

24. The unmarried widow, or, in case of her death or remarriage, the minor children of soldiers and sailors who were honorably discharged after 90 days' actual service during the War of the Rebellion, the Spanish-American War, or the Philippine insurrection may make entry as such widow or minor children if the soldier

or sailor died without making entry. The minor children must make a joint entry through their duly appointed guardian.

### **Residence and Cultivation.**

(See also Commutation and Final Proof.)

25. The residence and cultivation required by the homestead law means a continuous maintenance of an actual home on the land entered, to the exclusion of a home elsewhere, and continuous annual cultivation of some portion of the land. A mere temporary sojourn on the land, followed by occasional visits to it once in six months or oftener, will not satisfy the requirements of the homestead law, and may result in the cancellation of the entry.

The law contemplates that the entryman make the land the home of himself and his family, and the failure of his family to reside on the land with him raises a presumption against the bona fides of his residence which must be rebutted at the time of proof.

26. No specific amount of either cultivation or improvements is required where entry is made under the general homestead law, but there must in all cases be such continuous improvement and such actual cultivation as will show good faith of the entryman. Lands covered by such a homestead entry may be used for grazing purposes if they are more valuable for pasture than for cultivation to crops. When lands of this character are used for pasturage, actual grazing will be accepted in lieu of actual cultivation. The fact that lands covered by homesteads are of such a character that they can not be successfully cultivated or pastured will not be accepted as an excuse for failure to either cultivate or graze them.

Grazing can not be accepted in lieu of cultivation when entry is made under the enlarged homestead Act. (See par. 51.)

**Homestead Entries for Coal Lands.**—Where homestead entry is made under the Act of June 22, 1910 (36 Stat., 583), for land which has been withdrawn or classified as coal land, or which is valuable for coal, the entryman must show improvements as above stated and must further comply with the requirements of the enlarged homestead Act of February 19, 1909 (35 Stat., 639), as to residence and cultivation; that is, he must cultivate at least one-eighth of the area of the entry to agricultural crops other than native grasses, beginning with the second year of the entry, and at least one-fourth of the area of the entry beginning with the third year of the entry and continuing to the date of proof. Entries in this class can not be commuted. (See par. 51.)

27. Actual residence on the lands entered must begin within six months from the date of all homestead entries, except additional entries and adjoining farm entries of the character mentioned in paragraphs 14 and 15, and residence with improvements and annual cultivation must be continued until the entry is five years old, except in cases hereinafter mentioned; but all entrymen who actually resided upon and cultivated lands entered by them prior to making such entries and while the land was subject to settlement or entry by them, may make final proof at any time after entry when they can show five years' residence and cultivation.

An entryman can not claim credit for residence prior to entry during the time when the land was not subject to settlement or



entry by him, as, for instance, while it was embraced in the entry of another.

Under certain circumstances leaves of absence may be granted in the manner pointed out in paragraph 36 of these suggestions, but the entryman can not claim credit for residence during the time he is absent under such leave.

An extension of time for establishing residence can be granted only in cases where the entryman is actually prevented by climatic hindrances from establishing his residence within the required time. This extension can not be granted in advance; but on making final proof or in case a contest is instituted against the entry the entryman may show the storms, floods, blockades of snow or ice, or other climatic reasons which rendered it impossible for him to commence residence within six months from date of entry, and he must as soon as possible after the climatic hindrances disappear establish his residence on the land entered. Failure to establish residence within six months from date of entry will not necessarily result in a forfeiture of the entry, provided the residence be established prior to the intervention of an adverse claim.

After an entryman has fully complied with the law and has submitted proof he is no longer required to live on the land. But all entrymen should understand that if they discontinue their residence on the land prior to the issuance of patent they do so at their risk, and by so doing they may place themselves in such a position that they may be unable to comply with requirements made by the General Land Office, should their proof on examination be found unsatisfactory.

28. Residence and cultivation by soldiers and sailors of the classes mentioned in paragraph 5 must begin within six months from the time they file their declaratory statements regardless of the time they make entry under such statement, but if they make entry without filing a declaratory statement they must begin their residence within six months from the date of such entry, and residence thus established must continue in good faith, with improvements and annual cultivation for at least one year, but after one year's residence and cultivation the soldier or sailor is entitled to credit on the remainder of the five-year period for the term of his actual naval or military service, or if he was discharged from the Army or Navy because of wounds received or disabilities incurred in the line of duty he is entitled to credit for the whole term of his enlistment. No credit can be allowed for military service where commutation proof is offered.

29. A soldier or sailor making entry during his enlistment in time of peace is not required to reside personally on the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is five years old or until it has been commuted; but a soldier or sailor is not entitled to credit on account of his military service in time of peace. And if such soldier has no family, there is no way by which he can make entry and acquire title during his enlistment in time of peace.

30. Widows and minor orphan children of soldiers and sailors who make entry as such widows and children must begin their residence and cultivation of the lands entered by them within six months from the dates of their entries, or the filing of declaratory

statement, and thereafter continue both residence and cultivation for such period as will, when added to the time of their husbands' or fathers' military or naval service, amount to five years from the date of the entry, and if the husbands or fathers either died in the service or were discharged on account of wounds or disabilities incurred in the line of duty, credit for the whole term of their enlistment, not to exceed four years, may be taken, but no patent will issue to such widows or children until there has been residence and cultivation by them for at least one year. No credit can be allowed for military service where commutation proof is offered.

31. Persons who make entry as the widow or heirs of settlers are not required to both reside upon and cultivate the land entered by them, but they must at least cultivate the land entered by them for such a period as, added to the time during which the settler resided on and cultivated the land, will make the required period of five years. Commutation proof may, however, be made upon showing 14 months' actual residence performed either by the settler or the heirs or widow, or in part by the settler and in part by the widow or heirs. In case of entries made under the enlarged homestead Act cultivation as required by that Act must be maintained by the widows or heirs. (See par. 51.) The above rules also apply to a devisee of the settlement claim in cases where a devisee is entitled to take.

32. The widow or heirs of a homestead entryman who dies before he earns patent are not required to both reside upon and cultivate the lands covered by his entry, but they must, within six months after the death of the entryman, begin cultivation on the land covered by the entry and continue same for such a period of time as will, when added to the time during which the entryman complied with the law, amount in the aggregate to the required period of five years. Commutation proof may be made showing 14 months' actual residence performed by the entryman or by the widow or heirs, or in part by the entryman and in part by the widow or heirs. In case of an entry made under the enlarged homestead Act cultivation as required by that Act must be maintained by the widow or heirs. (See par. 51.) The above rules also apply to a devisee of the entry in cases where the devisee is entitled to take.

33. Homestead entrymen who have been elected to either a Federal, State, or county office, after they have made entry and established an actual residence on the land covered by their entries are not required to continue such residence during their term of office, if the discharge of their bona fide official duties necessarily requires them to reside elsewhere than upon the land; but they must continue their cultivation and improvements for the required length of time. Such an officeholder can not commute, however, unless he can show at least 14 months' actual residence. (See circulars of February 16 and 20, 1909, Appendix No. 13, and October 18, 1907, Appendix No. 14.)

A person who makes entry after he has been elected to office is not excused from maintaining residence, but must comply with the law in the same manner as though he had not been elected.

34. Residence is not required on land covered by an adjoining farm entry of the kind mentioned in paragraph 15; but a person



who makes an adjoining farm entry is not entitled to a patent until he has continued his residence and cultivation for the full five years on the land owned by him at the time he made entry, or on the adjoining lands entered by him, unless he commutes his entry after 14 months' residence on either the entered lands or the lands originally owned by him; in neither case can credit be claimed for residence on the original farm prior to the date of the adjoining farm entry.

A person who has made an additional entry of the kind mentioned in paragraph 14 for lands adjoining his original entry is not entitled to patent for the lands so entered until he can show five years' residence, either on the original entry or in part on the original and in part on the additional. No commutation of the additional entry is allowed by law in the latter case.

35. Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began.

### **Leaves of Absence.**

(See pages 26 to 31.)

36. Leaves of absence for one year or less may be granted to entrymen who have established actual residence on the lands entered by them in all cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent upon him by a cultivation of the land.

Applications for leaves of absence should be addressed to the Register and Receiver of the land office where the entry was made and should be sworn to by the applicant and some disinterested person before such Register and Receiver or before some officer in the land district using a seal and authorized to administer oaths, except in cases where, through age, sickness, or extreme poverty, the entryman is unable to visit the district for that purpose, when the oath may be made outside of the land district. All applications of this kind should clearly set forth:

(a) The number and date of the entry, a description of the lands entered, the date of the establishment of his residence on the land, and the extent and character of the improvements and cultivation made by the applicant.

(b) The kind of crops which failed or were destroyed and the cause and extent of such failure or destruction.

(c) The kind and extent of the sickness, or injury assigned, and the extent to which the entryman was prevented from continuing his residence upon the land, and, if practicable, a certificate signed by a reliable physician as to such sickness, disease, or injury, should be furnished.

(d) The character, cause, and extent of any unavoidable casualty which may be made the basis of the application.

(e) The dates from which and to which the leave of absence is requested.

An entryman can not claim credit for residence during the time

he is absent under a leave of absence, but such a period of absence will not be held to break the continuity of his residence; that is, the period of residence preceding such an absence may be added to the period of residence succeeding such absence to make up the time required for either five-year or commutation proof.

(See title, Leave of Absence.)

### **Enlarged Homestead Entries.**

46. Kind of Land Subject to Entry.—The first section of the Act of February 19, 1909 (35 Stat., 639; see Appendix No. 15), provides for the making of homestead entries for an area of 320 acres, or less, of nonmineral, nontimbered, nonirrigable public land in the States of Colorado, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and in the Territories of Arizona and New Mexico. By the first section of the Act approved June 17, 1910 (36 Stat., 531, see Appendix No. 15), the same kind of entries are allowed to be made in the State of Idaho.

The terms "arid" or "nonirrigable" land, as used in these Acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these Acts. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under these Acts, provided, however, that no one entry shall embrace in the aggregate more than 40 acres of such irrigable lands.

47. Designation of Lands.—From time to time lists designating the lands which are subject to entry under these Acts are sent to the Registers and Receivers in the States affected, and they are instructed immediately upon the receipt of such lists to note the same upon their tract books. In the order designating land a date is fixed on which such designation will become effective. Until such date no applications to enter can be received and no entries allowed under these Acts, but on or after the date fixed it is competent for the Registers and Receivers to dispose of applications for land designated under the provisions of these Acts, in like manner as other applications for public lands.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above Acts the designation may be canceled; but where an entry is made in good faith under the provisions of these Acts, such designation will not thereafter be modified to the injury of anyone who, in good faith, has acted upon such designation. Each entryman must furnish affidavit as required by section 2 of the Acts.

48. Compactness—Fees.—Lands entered under the enlarged homestead Acts must be in a reasonably compact form and in no event exceed  $1\frac{1}{2}$  miles in length.



The Acts provide that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of \$10 required under the general homestead law, the commissions will be determined by the area of the land embraced in the entry.

49. Form of Application.—Applications to make entry under these Acts must be submitted on forms prescribed by the General Land Office, and in case of an original entry on No. 4-003.

The affidavit of an applicant as to the character of the land must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavits should be modified accordingly.

50. Additional Entries.—Sections 3 of the Acts provide that any homestead entryman of lands of the character described in the first sections of the Acts, upon which entry final proof has not been made, may enter such other lands subject to the provisions of the Acts, contiguous to the former entry, which shall not, together with the lands embraced in the original entry, exceed 320 acres, and that residence upon and cultivation of the original entry shall be accepted as equivalent to residence upon and cultivation of the additional entry.

These sections contemplate that lands may, subsequent to entry, be classified or designated by the Secretary of the Interior as falling within the provisions of these acts, and in such cases an entryman of such lands may, at any time prior to final proof on his original entry, make such additional entry, provided he is otherwise qualified. Applicants for such additional entries must tender the proper fees and commissions, and make application and affidavit on the form prescribed (No. 4-004). Entrymen who have made final proof on their original entries are not qualified to make additional entries.

51. Final Proof on Original and Additional Entries—Commutation Not Allowed.—Final proof must be made as in ordinary homestead cases, and in addition to the showing required of ordinary homestead entrymen it must be shown that at least one-eighth of the area embraced in the entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry has been continuously cultivated to agricultural crops other than native grasses, beginning with the third year of the entry and continuing to date of final proof.

Final proof submitted on an additional entry must show that the area of such entry required by the acts to be cultivated has been cultivated in accordance with such requirement; or that such part of the original entry as will, with the area cultivated in the additional entry, aggregate the required proportion of the combined entries, has been cultivated in the manner required by the acts.

Proof must be made on the original entry within the statutory period of seven years from the date of the entry; and if it can not be shown at that time that the cultivation has been such as to satisfy the requirements of the Acts as to both entries it will be necessary to submit supplemental proof on the additional entry at the proper time. But proof should be made at the same time to cover both entries in all cases where the residence and cultivation are such as to meet the requirements of the Acts.

Commutation of either original or additional entry made under these Acts is expressly forbidden.

52. Right of Entry.—Homestead entries under the provisions of section 2289 of the Revised Statutes, for 160 acres or less, may be made by qualified persons within the States and Territories named upon lands subject to such entry, whether such lands have been designated under the provisions of these Acts or not. But those who make entry under the provisions of these Acts can not afterwards make homestead entry under the provisions of the General Homestead Law.

A person who has, since August 30, 1890, entered and acquired title to 320 acres of land under the agricultural land laws (which is construed to mean the timber and stone, desert land, and homestead laws), is not entitled to make entry under these Acts; neither is a person who has acquired title to 160 acres under the General Homestead Law entitled to make another homestead entry under these Acts, unless entitled to the benefits of section 2 of the Act of June 5, 1900 (31 Stat., 267), or section 2 of the Act of May 22, 1902 (32 Stat., 203, Appendix No. 5).

If, however, a person is a qualified entryman under the homestead laws of the United States, he may be allowed to enter 320 acres under these Acts, or such a less amount as when added to the lands previously entered or held by him under the agricultural land laws shall not exceed in the aggregate 480 acres.

53. Constructive Residence on Certain Lands in Utah.—The sixth section of the Act of February 19, 1909 (35 Stat., 639, Appendix No. 15), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that Act; with the exception, however, that entrymen of such lands, will not be required to prove continuous residence thereon. This Act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the Act; and no attempt will be made at this time to determine how far from the land an entryman will be allowed to reside, as it is believed that the proper determination of that question will depend upon the circumstances of each case.

Applications to enter under section 6 of this Act will not be received until the date fixed in the order designating the lands as subject to entry under this section. Lists of lands designated under this section will be from time to time furnished to the Registers and Receivers, who will be instructed to note same on their tract books immediately upon their receipt. These lists will fix a date on which the designations will become effective. Applications under this section must be submitted on form No. 4-003a.

Final proof under this section must be made as in ordinary homestead entries, except that proof of residence on the land will not be required, in lieu of which the entryman will be required to show that, from the date of entry until the time of making final proof, he resided within such distance from said land as enabled him to successfully farm the same. Such proof must also show that



not less than one-eighth of the entire area of land entered was cultivated during the second year, not less than one-fourth during the third year and not less than one-half during the fourth and fifth years after entry.

54. **Constructive Residence Permitted on Certain Lands in Idaho.**—The sixth section of the Act of June 17, 1910 (36 Stat., 531), provides that not exceeding 320,000 acres of land in the State of Idaho, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of this Act, with the exception, however, that entrymen of such lands will not be required to prove continuous residence thereon. This section provides, in such cases, that after six months from date of entry and until final proof, all entrymen must reside not more than 20 miles from the land entered, and be engaged personally in preparing the soil for seed, seeding, cultivating, and harvesting crops upon the land during the usual seasons for such work, unless prevented by sickness, or other unavoidable cause. It is further provided that leaves of absence from the residence established under this section, may be granted upon the same terms and conditions as are required from other homestead entrymen.

Applications to enter under this section of this Act will not be received before the date fixed in the order designating the land as subject to entry under this section. Lists of lands designated under this section will from time to time be furnished the Registers and Receivers who will be instructed to note the same on their tract books immediately upon their receipt. In the lists furnished the Registers and Receivers a date will be fixed on which the designation will become effective. Applications under this section must be submitted on form 4-003a.

The final proof under this section must be made as in ordinary homestead entries, except that proof of residence on the land will not be required, in lieu of which the entryman will be required to show that, from the expiration of six months after the date of original entry and until the time of making final proof, he resided not more than 20 miles from the land entered and was personally engaged in farming the same as required by said Act. Such proof must also show that not less than one-eighth of the entire area of the land entered was cultivated during the second year; not less than one-fourth during the third year; and not less than one-half during the fourth and fifth years.

55. **Officers Before Whom Applications and Proofs May Be Made.**—The Acts provide that any person applying to enter land under the provisions thereof shall make and subscribe before the proper officer an affidavit, etc. The term "proper officer," as used herein, is held to mean any officer authorized to take affidavits or proof in homestead cases.

Fred Dennett,  
Commissioner.

Approved April 20, 1911.

Walter L. Fisher,  
Secretary.

## APPENDIX.

(No. 1.)

## UNITED STATES REVISED STATUTES.\*

Sec. 2288. Any bona fide settler under the preemption, homestead, or other settlement law shall have the right to transfer by warranty against his own acts any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, telegraph, telephones, canals, reservoirs, or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to his claim. (As amended by Act Mar. 3, 1905.)

Sec. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter-section, or a less quantity, of unappropriated public lands, to be located in a body in conformity to the legal subdivisions of the public lands; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory shall acquire any right under the homestead law. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres. (As amended by Act Mar. 3, 1891.)

Sec. 2290. That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age, and that such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself, or herself, and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person, except himself, or herself, and upon filing such affidavit with the Register or Receiver on payment of five dollars, when the entry is of not more than eighty acres, and on payment of ten dollars, when the entry is for more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified. (As amended by Act Mar. 3, 1891.)

For sec. 2291, as amended by three year law, see page 311.

\* See Table of Revised Statutes Cited and Construed.



Sec. 2292. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office fees and sum of money above specified.

Sec. 2293. (See pages 560 to 563.)

For sec. 2294 as amended by the Act of March 4, 1904 (33 Stat., 59), see page 286.

Sec. 2296. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

For sec. 2297 as amended by three year homestead law see page 303.

Sec. 2298. No person shall be permitted to acquire title to more than one quarter section under the provisions of this chapter.

Sec. 2299. Nothing contained in this chapter shall be so construed as to impair or interfere in any manner with existing preemption rights; and all persons who may have filed their applications for a preemption right prior to the twentieth day of May, eighteen hundred and sixty-two, shall be entitled to all the privileges of this chapter.

Sec. 2300. No person who has served, or may hereafter serve, for a period not less than fourteen days in the Army or Navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this chapter on account of not having attained the age of twenty-one years.

Sec. 2301. Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section twenty-two hundred and eighty-nine from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen months, and the provision of this section shall apply to lands on the ceded portion of the Sioux Reservation by Act approved March second, eighteen hundred and eighty-nine, in South Dakota, but shall not relieve said settlers from any payments now required by law. (As amended by Act of March 3, 1891.)

Sec. 2302. No distinction shall be made in the construction or execution of this chapter on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions.

For sec. 2304 see page 563.

Sec. 2305. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore re-

quired to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements: Provided, That in every case in which a settler on the public land of the United States under the homestead laws died while actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the war with Spain or the Philippine insurrection, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, may proceed forthwith to make final proof upon the land so held by the deceased soldier and settler, and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation for the full period of five years, and shall entitle his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, to make final proof upon and receive Government patent for said land; and that upon proof produced to the officers of the proper local land office by the widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, that the applicant for patent is the widow, if unmarried, or in case of her death or marriage, his orphan children or his or their legal representatives, and that such soldier, sailor, or marine died while in the service of the United States as hereinbefore described, the patent for such land shall issue. (As amended by Act of March 1, 1901.)

For sec. 2307 see page 343.

For sec. 2309 see page 343.

See Table of Revised Statutes cited and construed, page 527.

(No. 2.)

### THREE HUNDRED AND TWENTY ACRE LIMITATION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

No person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry, or settlement is validated by this Act: Provided, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this Act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

Approved, August 30, 1890. (26 Stat., 391.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,



**Sec. 17.** That reservoir sites located or selected and to be located and selected under the provisions of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs; and that the provisions of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this Act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands, and not include lands entered or sought to be entered under mineral-land laws.

Approved, March 3, 1891. (26 Stat., 1095.)

(No. 3.)

#### **FREE HOMESTEAD ACT.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all settlers under the homestead laws of the United States upon the agricultural public lands, which have already been opened to settlement, acquired prior to the passage of this Act by treaty or agreement from the various Indian tribes, who have resided or shall hereafter reside upon the tract entered in good faith for the period required by existing law, shall be entitled to a patent for the land so entered upon the payment to the local land officers of the usual and customary fees, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry: Provided, That the right to commute any such entry and pay for said lands in the option of any such settler and in the time and at the prices now fixed by existing laws shall remain in full force and effect: Provided, however, That all sums of money so released which if not released would belong to any Indian tribe shall be paid to such Indian tribe by the United States, and that in the event that the proceeds of the annual sales of the public lands shall not be sufficient to meet the payments heretofore provided for agricultural colleges and experimental stations by an Act of Congress, approved August thirtieth, eighteen hundred and ninety, for the more complete endowment and support of the colleges for the benefit of agriculture and mechanic arts, established under the provisions of an Act of Congress, approved July second, eighteen hundred and sixty-two, such deficiency shall be paid by the United States: And provided further, That no lands shall be herein included on which the United States Government had made valuable improvements, or lands that have been sold at public auction by said Government.

Sec. 2. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

Approved, May 17, 1900. (31 Stat., 179.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section twenty-three hundred and one of the Revised Statutes of the United States, as amended, allowing homestead settlers to commute their homestead entries be, and the same hereby are, extended to all homestead settlers affected by or entitled to the benefits of the provisions of the Act entitled "An Act providing for free homesteads on the public lands for actual and bona fide settlers, and reserving the public lands for that purpose," approved the seventeenth day of May, anno Domini nineteen hundred: Provided, however, That in commuting such entries the entryman shall pay the price provided in the law under which original entry was made.

Approved, January 26, 1901. (31 State., 740.)

(No. 4.)

#### ADDITIONAL HOMESTEAD ENTRIES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Sec. 6. That every person entitled, under the provisions of the homestead law, to enter a homestead, who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and received the Receiver's final receipt therefor, shall be entitled under said laws to enter as personal right, and not assignable, by legal subdivisions of the public lands of the United States subject to homestead entry, so much additional land as added to the quantity previously so entered by him shall not exceed one hundred and sixty acres: Provided, That in no case shall patent issue for the land covered by such additional entry until the person making such additional entry shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise fully complied with such laws: Provided also, That this section shall not be construed as affecting any rights as to location of soldiers' certificates heretofore issued under section two thousand three hundred and six of the Revised Statutes.

Approved, March 2, 1889. (25 Stat., 854.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Sec. 2. That any homestead settler who has heretofore entered, or may hereafter enter, less than one-quarter section of land may enter other and additional land lying contiguous to the original entry which shall not, with the land first entered and occupied, exceed in the aggregate one hundred and sixty acres, without proof of residence upon and cultivation of the additional entry; and if final proof of settlement and cultivation has been made for the original entry when the additional entry is made, then the patent



shall issue without further proof: Provided, That this section shall not apply to or for the benefit of any person who does not own and occupy the lands covered by the original entry: And provided, That if the original entry should fail for any reason prior to patent, or should appear to be illegal or fraudulent, the additional entry shall not be permitted, or, if having been initiated, shall be canceled.

Sec. 3. That commutation under the provisions of section twenty-three hundred and one of the Revised Statutes shall not be allowed of an entry made under this Act.

Approved, April 28, 1904. (33 Stat., 527.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Sec. 2. That any person who has heretofore made entry under the homestead laws and commuted same under provisions of section twenty-three hundred and one of the Revised Statutes of the United States and the amendments thereto, shall be entitled to the benefits of the homestead laws, as though such former entry had not been made, except that commutation under the provisions of section twenty-three hundred and one of the Revised Statutes shall not be allowed of an entry made under this section of this Act.

Approved, June 5, 1900. (31 Stat., 267.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Sec. 2. That any person who, prior to the passage of an Act entitled "An Act providing for free homesteads on the public lands for actual and bona fide settlers, and reserving the public lands for that purpose," approved May seventeenth, nineteen hundred, having made a homestead entry and perfected the same and acquired title to the land by final entry by having paid the price provided in the law opening the land to settlement, and who would have been entitled to the provisions of the act before cited had final entry not been made prior to the passage of said Act, may make another homestead entry of not exceeding one hundred and sixty acres of any of the public lands in any State or Territory subject to homestead entry: Provided, That any person desiring to make another entry under this Act will be required to make affidavit, to be transmitted with the other filing papers now required by law, giving the description of the tract formerly entered, date and number of entry, and name of the land office where made, or other sufficient data to admit of readily identifying it on the official records: And provided further, That said person has all the other proper qualifications of a homestead entryman: And provided also, That commutation under section twenty-three hundred and one of the Revised Statutes or any amendment thereto, or any similar statute, shall not be permitted of an entry made under this Act, excepting where the final proof submitted on the former entry hereinbefore described, shows a residence upon the land covered thereby for the full period of five years or such term of residence thereon as added to any properly credited military or naval service shall equal such period of five years.

Approved, May 22, 1902. (32 Stat., 203.)

## (No. 5.)

**SECOND HOMESTEAD ENTRIES.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, prior to the approval of this Act, has made entry under the homestead or desert-land laws, but who, subsequently to such entry, from any cause shall have lost, forfeited, or abandoned the same, shall be entitled to the benefits of the homestead or desert-land laws as though such former entry had not been made, and any person applying for a second homestead or desert-land entry under this Act shall furnish a description and the date of his former entry: Provided, That the provisions of this Act shall not apply to any person whose former entry was canceled for fraud, or who relinquished his former entry for a valuable consideration in excess of the filing fees paid by him on his original entry.

Approved, February 3, 1911. (Public—No. 340.)

See table of Acts of Congress cited and construed.

## (No. 6.)

**RIGHTS OF SETTLERS.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, \*

Sec. 3. That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the preemption laws to put their claims on record, and his right shall relate back to the date of settlement the same as if he settled under the preemption laws.

Approved, May 14, 1880. (21 Stat., 140.)

(See all similar laws application and settlement.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, \*

Sec. 2. That all commutations of homestead entries shall be allowed after the expiration of fourteen months from date of settlement.

Approved, June 3, 1896. (29 Stat., 197.)

## (No. 7.)

**HOMESTEAD ENTRY BY MARRIED WOMAN.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the third section of the Act of Congress approved May fourteenth, eighteen hundred and eighty, entitled "An Act for the relief of settlers on the public lands," be amended by adding thereto the following:

"Where an unmarried woman who has heretofore settled, or may hereafter settle, upon a tract of public land, improved, established, and maintained a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the home-



stead law, and has married, or shall hereafter marry, before making entry of said land, or before making application to enter said land, she shall not, on account of her marriage, forfeit her right to make entry and receive patent for the land: Provided, That she does not abandon her residence on said land, and is otherwise qualified to make homestead entry: Provided further, That the man whom she marries is not, at the time of their marriage, claiming a separate tract of land under the homestead law.

"That this Act shall be applicable to all unpatented lands claimed by such entrywoman at the date of passage."

Approved, June 6, 1900. (31 Stat., 683.)

(See Married Women and Deserted Wives, page 266.)

(No. 8.)

Settlers Who Become Insane. (See pages 26-31, 353.)

(No. 9.)

Leaves of absence. (See pages 26-31, 337.)

(No. 10.)

#### FINAL PROOF NOTICE.

Act approved March 3, 1879 (20 Stat., 472). (See page 216.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Sec. 7. That the "Act to provide additional regulations for homestead and preemption entries of public land," approved March third, eighteen hundred and seventy-nine, shall not be construed to forbid the taking of testimony for final proof within ten days following the day advertised as upon which such final proof shall be made, in cases where accident or unavoidable delays have prevented the applicant or witnesses from making such proof on the date specified.

Approved, March 2, 1889. (25 Stat., 854.)

(No. 11.)

#### PENALTIES FOR DESTROYING CORNER MONUMENTS.

United States Criminal Code—Chapter 4, Section 57.

Sec. 57. Whoever shall wilfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall wilfully cut down any witness tree or any tree blazed to mark the line of a Government survey, or shall wilfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months or both.

Approved.

(No. 12.)

#### RELINQUISHMENTS.

(See page 543.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when a preemption, homestead, or timber-culture claimant shall file a written relinquishment of his claim in the local land office, the land covered

by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office.

\* \* \* \* \*

Approved, May 14, 1880. (21 Stat., 140.)

(No. 13.)

### INSTRUCTIONS CONCERNING ABSENCE BY OFFICEHOLDERS FROM THEIR HOMESTEADS.

Department of the Interior,  
General Land Office,  
Washington, D. C., February 20, 1909.

Registers and Receivers,  
United States Land Offices.

Gentlemen: In the case of Ed Jenkins, decided by the department February 3, 1909, it was held that the absence of a person from his homestead entry on account of his duties as a public official can not be excused in the consideration of commutation proof.

Attention is called to circular of February 16, 1909, a copy of which is printed below.

In no case is official employment to be accepted as an excuse for absence from a homestead entry where commutation proof is offered. The making of commutation proof is to be governed by the provisions of the circular of October 18, 1907, a copy of which is also printed below.

Very respectfully,

Fred Dennett,  
Commissioner.

Washington, D. C., February 16, 1909.

Registers and Receivers,  
United States Land Offices.

Gentlemen: For many years it has been the practice of the department to permit a homestead entryman who had established residence upon his claim and afterwards had been elected or appointed to a Federal, State, or county office, to be absent from his entry if required by his official duty, and to consider such absence constructive residence upon his claim. This ruling includes deputies and assistants in such offices. See 2 L. D., 147; 6 L. D., 668; 7 L. D., 88; 9 L. D., 523-525; 17 L. D., 195; 21 L. D., 155.

This privilege, which is not a statutory right but rests solely upon departmental rulings, has led to such grave abuse that the objects of the homestead law have been to a great extent defeated. Therefore, the department has decided to discontinue the said practice in so far as it has been applied to persons appointed to office, and limit it to persons elected to office. All decisions and instructions heretofore given, not in harmony with this view, are hereby overruled or modified in so far as they accredit such absence as residence to persons not elected to office.

It is not intended, however, to disturb the status of persons who have acted under the rule heretofore prevailing, nor to deny the benefit of the rule to persons who, prior to April 1, 1909, shall have been appointed to such office. Persons having homestead entries, who enter upon public service in nonelective positions to which they were not appointed prior to the above date, will be required to comply fully with all of the provisions of the homestead law just as other settlers.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:  
Frank Pierce,  
Acting Secretary.

(No. 14.)

### COMMUTATION PROOF.

Washington, D. C., October 18, 1907.

Registers and Receivers,  
United States Land Offices.

Gentlemen: The following rules will govern your action upon homestead commutation proofs hereafter submitted, namely:

1. Commutation proof offered under a homestead entry made on or after



November 1, 1907, will be rejected unless it be shown thereby that the entryman has, in good faith, actually resided upon and cultivated the land embraced in such entry for the full period of at least 14 months.

2. Where such commutation proof is offered under an entry made prior to November 1, 1907, if it be satisfactorily shown thereby that the entryman had, in good, faith, established actual residence on the land within six months from the date of his entry, he may be credited with constructive residence from date of entry: Provided, That it be also shown that such residence was, in good faith, maintained for such period as, when added to the period of constructive residence herein recognized, equals the full period of 14 months' residence required by the homestead laws; and

3. In no case can commutation proof be accepted when it fails to show that the required residence and cultivation continued to the date on which application for notice of intention to make such proof was filed.

Very respectfully,

R. A. Ballinger,  
Commissioner.

Approved,

James Rudolph Garfield,  
Secretary.

(The rule of constructive residence has been abolished.)  
See Commutation and Final Proof.

(No. 15.)

### ENLARGED HOMESTEADS.

35 Stat., 639. (See pages 196, 210.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is a qualified entryman under the homestead laws of the United States may enter, by legal subdivision, under the provisions of this act, in the State of Idaho, three hundred and twenty acres or less of arid nonmineral, nonirrigable, unreserved, and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body and not over one and one-half miles in extreme length: Provided, That no lands shall be subject to entry under the provisions of this Act until the lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation, at a reasonable cost, from any known source of water supply.

(Sections 2, 3, 4, and 5 of this Act are in the exact language of corresponding sections of the Act of February 19, 1909, supra.)

Sec. 6. That whenever the Secretary of the Interior shall find that any tracts of land in the State of Idaho subject to entry under this act do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible, he may, in his discretion, designate such tracts of land, not to exceed in the aggregate three hundred and twenty thousand acres, and thereafter they shall be subject to entry under this Act, without the necessity of residence upon the land entered: Provided, That the entryman shall in good faith cultivate not less than one-eighth of the entire area of the entry during the second year, one-fourth during the third year, and one-half during the fourth and fifth years after the date of said entry, and that after six months from date of entry and until final proof the entryman shall reside not more than twenty miles from said land and be engaged personally in preparing the soil for seed, seeding, cultivating, and harvesting crops upon the land during the usual seasons for such work unless prevented by sickness or other unavoidable cause. Leave of absence from a residence established under this section may, however, be granted upon the same terms and conditions as are required of other homestead entrymen.

Approved, June 17, 1910. (36 Stat., 531.)

## CIRCULAR No. 157.

**ADDITIONAL ENTRIES UNDER ENLARGED HOMESTEAD ACTS—INSTRUCTIONS.**

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., August 14, 1912.

REGISTERS AND RECEIVERS,

*United States Land Offices, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington, and Wyoming.*

Gentlemen: In a decision rendered June 11, 1912 (in the case of John Auld, Havre series 08277), the department held that where a person has an entry under the general homestead law more than seven years old, he is not entitled to make an additional entry under section 3 of the enlarged homestead act of February 19, 1909 (35 Stat., 639), or June 17, 1910 (36 Stat., 531), though proof has not been submitted on the original entry.

The department in said decision said:

“It will be observed that said section (3) makes no provision for allowance of an entry under said act as additional to a former entry upon which proof has been offered. It is not conceivable that a right to make such additional entry could be gained by deferring the making of final proof on an original entry beyond the fixed, legal statutory period. If proof be made upon the original entry, or if the statutory period within which such proof is required by law to be made expires prior to the making of additional entry, then the right granted by section 3 has lapsed and is of no avail. To hold otherwise would permit circumvention of the law and would grant a right clearly not intended in the act.”

The department further says that while the board of equitable adjudication may, upon a proper showing, confirm the original entry, notwithstanding submission of the proof after expiration of the statutory period of seven years, the fact that an entryman may show himself entitled to equitable consideration by the board would not operate to confer upon him the right of additional entry.

You will govern yourselves by the principles above indicated, and reject all applications for additional entry filed under the conditions named in the decision. The same principles will apply where the expiration of the statutory life of an entry occurs under the provisions of the act of June 6, 1912 (Public, No. 179).

Very respectfully,

Approved:

FRED DENNETT, *Commissioner.*

SAMUEL ADAMS,

*First Assistant Secretary.*

**INSANE ENTRYMAN.**

General circular of January 25, 1904, provides:

The rights of homestead claimant who has become insane may, under Act of June 8, 1880, be proved up and his claim perfected by any person duly authorized to act for him during his disability. (21 Stat. L., 166.)

Such claim must have been initiated in full compliance with law,



by a person who was a citizen or had declared his intention of becoming a citizen and was in other respects duly qualified.

The party for whose benefit the Act shall be invoked must have become insane subsequent to the initiation of his claim.

Claimant must have complied with the law up to the time of becoming insane, and proof of compliance will be required to cover only the period prior to such insanity, but the Act will not be construed to cure a failure to comply with the law when the failure occurred prior to such insanity.

The final proof must be made by a party whose authority to act for the insane person during his disability shall be duly certified under seal of the proper Probate Court.

#### **SETTLERS WHO BECOME INSANE.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in which parties who regularly initiated claims to public lands as settlers thereon, according to the provisions of the preemption or homestead laws, have become insane or shall hereafter become insane before the expiration of the time during which their residence, cultivation, or improvement of the land claimed by them is required by law to be continued in order to entitle them to make the proper proof and perfect their claims, it shall be lawful for the required proof and payment to be made for their benefit by any person who may be legally authorized to act for them during their disability, and thereupon their claims shall be confirmed and patented, provided it shall be shown by proof satisfactory to the Commissioner of the General Land Office that the parties complied in good faith with the legal requirements up to the time of their becoming insane, and the requirements in homestead entries of an affidavit of allegiance by the applicant in certain cases as a prerequisite to the issuing of the patents shall be dispensed with so far as regards such insane parties.

Approved, June 8, 1880. (21 Stat., 166.)

Consult table of Acts of Congress cited and construed.

Consult three year homestead law.

Consult title "Contests."

[Circular No. 71.]

#### **ISOLATED TRACTS—SECTION 2455, REVISED STATUTES, AS AMENDED BY ACT OF JUNE 27, 1906 (34 STATS., 517).**

Department of the Interior,  
General Land Office,  
Washington, D. C., January 18, 1912.

Registers and Receivers, United States Land Offices.

Sirs: The sale of isolated tracts of public lands outside of the area in the State of Nebraska described in the Act of March 2, 1907 (34 Stats., 1224), is authorized by the provisions of the Act of June 27, 1906 (34 Stats., 517), amending section 2455\* of the Revised Statutes.

1. Applications to have isolated tracts ordered into market must be filed with the Register and Receiver of the local land office in the district wherein the lands are situated.

2. Applicants must show by their affidavits, corroborated by at least two witnesses, that the land contains no salines, coal, or other minerals; the amount, kind, and value of timber or stone thereon, if any; whether the land is occupied, and if so the nature of the occupancy: for what purpose the land is chiefly valuable; why it is desired that same be sold; that applicant desires to pur-

\*Amended, see page 358. (See Isolated Tracts of Coal Land, page 360.)

chase the land for his own individual use and actual occupation and not for speculative purposes, and that he has not heretofore purchased, under section 2455, Revised Statutes, or the amendments thereto, isolated tracts, the area of which, when added to the area now applied for, will exceed approximately 160 acres; and that he is a citizen of the United States, or has declared his intention to become such. If applicant has heretofore purchased lands under the provisions of the Acts relating to isolated tracts, same must be described in the application by subdivision, section, township, and range.

3. The affidavits of applicants to have isolated tracts ordered into market, and of their corroborating witnesses, may be executed before any officer having a seal and authorized to administer oaths in the county or land district in which the tracts described in the applications are situated.

4. The officer before whom such affidavits are executed will cause each applicant and his witnesses to fully answer the questions contained upon the accompanying form and, after the answers to the questions therein contained have been reduced to writing, to sign and swear to same before him.

5. No sale will be authorized upon the application of a person who has purchased under section 2455, Revised Statutes, or the amendments thereto, any lands, the area of which, when added to the area applied for, shall exceed approximately 160 acres.

6. Only one tract may be included in an application for sale, and no tract exceeding approximately 160 acres in area will be ordered into the market.

7. No tract of land will be deemed isolated and ordered into the market unless, at the time application is filed, the said tract has been subject to homestead entry for at least two years after the surrounding lands have been entered, filed upon, or sold by the Government, except in cases where some extraordinary reason is advanced sufficient, in the opinion of the Commissioner of the General Land Office, to warrant waiving this restriction.

8. The local officers will on receipt of applications note same upon the tract books of their office, and if the applications are not properly executed, or not corroborated, they will reject the same subject to the right of appeal. Applications found to be properly executed and corroborated will be disposed of as follows: (1) If all, or any portion, of the land applied for is not subject to disposition under the provisions of paragraph 7, or by reason of some prior appropriation of the land, the application will be forwarded to the General Land Office with the monthly returns, accompanied by a report as to the status of the land applied for and the surrounding lands, and any other objection to the offering known to the local officers. Upon determining what portion, if any, of the lands applied for should be ordered into the market, the Commissioner of the General Land Office will call upon the local officers and the Chief of Field Division for the report, as next provided for, concerning the value of the land. (2) If all of the land applied for is vacant and not withdrawn or otherwise reserved from such disposition, and the status of the surrounding lands is such that a sale might properly be ordered under paragraph 7, the local officers after noting the application on their records, will promptly forward



the same to the Chief of Field Division for report as to the value of the land and any objection he may wish to interpose to the sale, and the Register will make proper notations on his schedule of serial numbers in the event the application is not returned in time to be forwarded with the returns for the month in which it is filed. Upon receipt of the application from the Chief of Field Division with his report thereon, the local officers will attach their report as to the status of the land and that surrounding, the value of the land applied for, if they have any knowledge concerning the same, and any objection to the sale known to them, and forward the papers to the General Land Office with the returns for the current month.

9. An application for sale under these instructions will not segregate the land from entry or other disposal, for such lands may be entered at any time prior to the receipt in the local land office of the letter authorizing the sale and its notation of record. Should all of the land applied for be entered or filed upon while the application for sale is in the hands of the Chief of Field Division, the local officers will so advise him and request the return of the application for forwarding to the General Land Office. Likewise, should any or all of the land be entered or filed upon while the application for sale is pending before the General Land Office, the local officers will so report by special letter.

10. Upon receipt of the letter authorizing the sale, the local officers will note thereon the time when it was received and at once examine the records to see whether the tract, or any part thereof, has been entered. They will note on the tract book, opposite such portion of the tract as is found to be clear, that sale has been authorized, giving the date of the letter. Thereupon the land will be considered segregated for the purpose of sale.

If the examination of the records show that all of the tract has been entered or filed upon, the local officers will not promulgate the letter authorizing the sale, but will report the facts to the General Land Office, whereupon the letter authorizing the sale will be revoked. If a part of the land has been entered they will so report and proceed as provided below as to the remainder.

The local officers will prepare a notice for publication on the form hereinafter given, describing the land found to be unentered, and fixing a date for the sale, which date must be far enough in advance to afford ample time for publication of the notice, and for the affidavit of the publisher to be filed in the local land office prior to the date of the sale. The Register will also designate a newspaper as published nearest to the land described in the notice. The notice will be sent to the applicant with instructions that he must publish the same at his expense in the newspaper designated by the Register. Payment for publication must be made by applicant directly to the publisher, and in case the money for publication is transmitted to the Receiver he must issue receipt therefor, and immediately return the money to the applicant by his official check, with instructions to arrange for the publication of the notice as hereinbefore provided.

If on the day set for the sale the affidavit of the publisher, showing proper publication, has not been filed in the local land office, the Register and Receiver will report that fact to this office, and will not proceed with the sale.

11. Notice must be published once a week for five consecutive weeks (or thirty consecutive days, if in a daily paper) immediately prior to the date of sale, but a sufficient time should elapse between the date of the last publication and the date of sale to enable the affidavit of the publisher to be filed in the local land office. The notice must be published in the paper designated by the Register as nearest the land described in the application. The Register and Receiver will cause a similar notice to be posted in the local land office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in the local land office, prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence may consist of the affidavit of the publisher, accompanied by a copy of the notice published.

12. At the time and place fixed for the sale the Register or Receiver will read the notice of sale and allow all qualified persons an opportunity to bid. Bids may be made through an agent personally present at the sale, as well as by the bidder in person. The Register or Receiver conducting the sale will keep a record showing the names of the bidders and the amount bid by each. Such record will be transmitted to this office with the other papers in the case.

The sale will be kept open for one hour after the time mentioned in the published notice. At the expiration of the hour, and after all bids have been offered, the local officers will declare the sale closed, and announce the name of the highest bidder, who will be declared the purchaser, and he must immediately deposit the amount bid by him with the Receiver, and within ten days thereafter furnish evidence of citizenship, or of declaration of intention to become a citizen, nonmineral and nonsaline affidavit, Form 4-062, or nonsaline affidavit, Form 4-062a, as the case may require. Upon receipt of the proof, and payment having been made for the lands, the local officers will issue the proper final papers.

13. No lands will be sold at less than the price fixed by law, nor at less than \$1.25 per acre. Should any of the lands offered be not sold, the same will not be regarded as subject to private entry unless located in the State of Missouri (Act of March 2, 1889, 25 Stats., 854), but may again be offered for sale in the manner herein provided.

14. After each offering where the lands offered are not sold, the local officers will report by letter to the General Land Office. No report by letter will be made when the offering results in a sale, but the local officers will issue cash papers as in ordinary cash entries, noting thereon the date of the letter authorizing the offering, and report the same in their current monthly returns. With the papers must be forwarded the affidavit of publisher showing due publication, and the Register's certificate of posting.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved January 19, 1912:

Samuel Adams,  
First Assistant Secretary.



An Act to amend an Act entitled "An Act to amend section twenty-four hundred and fifty-five of the Revised Statutes of the United States," approved February twenty-sixth, eighteen hundred and ninety-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of February twenty-sixth, eighteen hundred and ninety-five, entitled "An Act to amend section twenty-four hundred and fifty-five of the Revised Statutes of the United States," be, and the same is hereby, amended so as to read as follows:

"It shall be lawful for the Commissioner of the General Land Office to order into market and sell, at public auction at the land office of the district in which the land is situated, for not less than one dollar and twenty-five cents per acre, any isolated or disconnected tract or parcel of the public domain not exceeding one quarter section which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land officers of the district in which such land may be situated: Provided, That this Act shall not defeat any vested right which has already attached under any pending entry or location."

Approved, June 27, 1906 (34 Stats., 517).

[Form 4—008B.]

## APPLICATION FOR SALE OF ISOLATED OR DISCONNECTED TRACTS.

Department of the Interior,  
United States Land Office,

....., 19..

To the Commissioner of the General Land Office:

....., whose post-office address is ..... respectfully requests that the ..... of Section ..... Township ..... Range ..... be ordered into market and sold under the Act of June 27, 1906 (34 Stats., 517), at public auction, the same having been subject to homestead entry for at least two years after the surrounding lands were entered, filed upon, or sold by the Government.

Applicant states that he .....  
(Insert statement that affiant is a native-born or naturalized citizen, or has declared intention to become such, as the case may be.)

..... citizen of the United States; that this land contains no salines, coal, or other minerals, and no stone except .....; that there is no timber thereon except ..... trees of the ..... species, ranging from ..... inches to ..... feet in diameter, and aggregating about ..... feet stumpage measure, of the estimated value of \$.....; that the land is not occupied except by ..... of ..... post-office, who occupies and uses it for the purpose of ....., but does not claim the right of occupancy under any of the public-land laws; that the land is chiefly valuable for ....., and that applicant desires to purchase same for his own individual use and actual occupation for the purpose of ....., and not for speculative purposes; that he has not heretofore purchased public lands sold as isolated tracts, the area of which when added to the area herein applied for will exceed approximately 160 acres. The lands heretofore purchased by him under said act are described as follows: .....

If this request is granted applicant agrees to have notice published at his expense in the newspaper designated by the register.

(Applicant will answer fully the following questions:)

Question 1. Are you the owner of land adjoining the tract above described? If so, describe the land by section, township, and range.

Answer .....

Question 2. To what use do you intend to put the isolated tract above described should you purchase same?

Answer .....

Question 3. If you are not the owner of adjoining land, do you intend to reside upon or cultivate the isolated tract?

Answer .....

Question 4. Have you been requested by anyone to apply for the ordering of the tract into market? If so, by whom?

Answer .....

Question 5. Are you acting as agent for any person or persons or directly

or indirectly for or in behalf of any person other than yourself in making said application?

Answer .....

Question 6. Do you intend to appear at the sale of said tract if ordered, and bid for same?

Answer .....

Question 7. Have you any agreement or understanding, expressed or implied, with any other person or persons that you are to bid upon or purchase the land for them or in their behalf, or have you agreed to absent yourself from the sale or refrain from bidding so that they may acquire title to the land?

Answer .....

(Sign here with full Christian name.)

We are personally acquainted with the above-named applicant and the land described by him, and the statements hereinbefore made are true to the best of our knowledge and belief.

(Sign here with full Christian name.)

(Sign here with full Christian name.)

I certify that the foregoing application and corroborative statement were read to or by the above-named applicant and witnesses, in my presence, before affiants affixed their signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by .....); that I verily believe affiants to be credible persons, and the identical persons hereinbefore described; that said affidavits were duly subscribed and sworn to before me, at my office, at ....., this ..... day of ....., 19..

.....  
Official designation of officer.)

[Forms 4—348c and 4—348d.]

# NOTICE FOR PUBLICATION—ISOLATED TRACT. PUBLIC-LAND SALE.

Department of the Interior,  
United States Land Office,

....., 19..

Notice is hereby given that, as directed by the Commissioner of the General Land Office, under the provisions of the Act of Congress approved June 27, 1906 (34 Stats., 517), pursuant to the application of ..... Serial No. ...., we will offer at public sale to the highest bidder, but at not less than \$..... per acre, at ..... o'clock .. m., on the ..... day of ....., next, at this office, the following tract of land.....

Any persons claiming adversely the above described land are advised to file their claims or objections on or before the time designated for sale.

.....,  
Register.

.....,  
Receiver.

[Circular No. 103.]

# ISOLATED TRACTS—SECTION 2455, REVISED STATUTES, AS AMENDED BY ACT OF MARCH 28, 1912 (PUBLIC, NO. 111).

Department of the Interior,  
General Land Office,  
Washington, D. C., April 30, 1912.

Registers and Receivers,  
United States Land Offices.

Sirs: Your attention is directed to the Act of Congress, approved March 28, 1912 (Public, No. 111), amending section 2455, Revised Statutes of the United States, to read as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-four hundred



and fifty-five of the Revised Statutes of the United States be amended to read as follows:

"Sec. 2455. It shall be lawful for the Commissioner of the General Land Office to order into market and sell at public auction, at the land office of the district in which the land is situated, for not less than one dollar and twenty-five cents an acre, any isolated or disconnected tract or parcel of the public domain not exceeding one-quarter section which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land officers of the district in which such land may be situated: Provided, That any legal subdivisions of the public land, not exceeding one-quarter section, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of said Commissioner, be ordered into the market and sold pursuant to this Act upon the application of any person who owns lands or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this act: Provided further, That this act shall not defeat any vested right which has already attached under any pending entry or location."

"Approved, March 28, 1912."

The material change is found in the first proviso, authorizing the sale of legal subdivisions not exceeding one-quarter section, the greater part of which is mountainous or too rough for cultivation, upon the application of any person who owns or holds a valid entry of lands adjoining such tract, and regardless of the fact that such tract may not be actually isolated by the entry or other disposition of surrounding lands. It is left entirely to the discretion of the Commissioner of the General Land Office to determine whether a tract shall be sold, and it will not be practicable to prescribe a set of rules governing the conditions which would render a tract susceptible to sale under the proviso. Applications will be disposed of by you in accordance with the isolated-tract regulations contained in circulars of January 19, 1912, No. 71 (general) and No. 72 (Kinkaid territory in Nebraska), except that paragraph 7 of Circular No. 71 and paragraph 22 of Circular No. 72 are not applicable, and no tract within the territory affected by the Kinkaid Act in Nebraska, exceeding 160 acres in area, will be ordered into the market under the first proviso to section 2455. Applications may be made upon the forms provided (4—008B and 4—008C) and printed in the circulars above named, properly modified as necessitated by the terms of the proviso. In addition, the applicant must furnish evidence of his ownership of adjoining land, or that he holds a valid entry embracing adjoining land, in connection with which entry he has fully met the requirements of law; also detailed evidence as to the character of the land applied for, the extent to which it is cultivable, and the conditions which render the greater portion unfit for cultivation; also a description of any and all lands theretofore applied for under the proviso or purchased under section 2455 or the amendments thereto. This evidence must consist of an affidavit by the claimant, corroborated by the affidavits of not less than two disinterested persons having actual knowledge of the facts.

No sale will be authorized under the proviso upon the application of a person who has procured one offering thereunder except upon a showing of strong necessity therefor owing to some peculiar condition which prevented original application for the full area allowed to be sold at one time, 160 acres. And in no event will an application be entertained where the applicant has purchased under section 2455, or the amendments thereto, an area which, when added to the area applied for, shall exceed approximately 160 acres.

Until it becomes necessary to reprint the same (when a new supply will be furnished you), you will use the form of notice for publication now provided for isolated-tract sales, but in all cases, whether the sale is ordered under the body of the Act or the proviso, you will insert, in lieu of "June 27, 1906 (34 Stat., 517)," the words "March 28, 1912 (Public, No. 111)," and where the sale is authorized under the proviso you will add after the description of the land, "This tract is ordered into the market on a showing that the greater portion thereof is mountainous or too rough for cultivation."

The provisions of section 2455 relating to the sale of tracts actually isolated are not changed by this Act, and such applications will be governed by the regulations contained in Circulars Nos. 71 and 72, supra, as heretofore.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:

Samuel Adams,

First Assistant Secretary.

[Circular No. 117.]

**ACT APPROVED APRIL 30, 1912—OFFERINGS AT PUBLIC SALE OF ISOLATED TRACTS OF COAL LAND.**

Department of the Interior,  
General Land Office,  
Washington, May 23, 1912.

Registers and Receivers,  
United States Land Offices.

Gentlemen: The Act of Congress approved April 30, 1912, Public 141, provides:

That \* \* \* unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall \* \* \* be subject \* \* \* to disposition \* \* \* under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in such lands so \* \* \* sold, and of the right to prospect for, mine, and remove the same in accordance with the provisions of the Act of June twenty-second, nineteen hundred and ten, and such lands shall be subject to all the conditions and limitations of said Act.

The instructions of January 19, 1912, and April 30, 1912, issued under amended section 2455, Revised Statutes, should be followed in administering this Act, in so far as they are applicable, and these instructions are issued in addition thereto:

(1) An application to have coal land offered at public sale must bear across its face the notation provided by paragraph 7(a) of the circular of September 8, 1910, 39 L. D., 179; in the printed and posted notice of sale will appear the statement:

This land will be sold in accordance with, and subject to, the provisions and reservations of the Act of June 22, 1910 (36 Stat., 583).

The purchaser's consent to the reservation of the coal in the land to the United States will not be required, but the cash certificate and patent will contain, respectively, the provisions specified in paragraph 7(b) of said circular of September 8, 1910.

(2) In cases where offerings have been had, and sales made, of lands coming within the purview of the Act of April 30, 1912, the purchasers may furnish their consent to receive patents, containing the limitation provided by said paragraph 7(b), and, thereupon, the entries may be confirmed and patents, limited as indicated, may issue.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:  
Samuel Adams,  
First Assistant Secretary.

**REVISED REGULATIONS UNDER THE KINKAID ACTS.**

[Circular.]

Department of the Interior,  
General Land Office,  
Washington, D. C., January 19, 1912.

Registers and Receivers, United States Land Offices.

Sirs: Section 7 of the Act of Congress approved May 29, 1908 (35 Stat., 465), amended section 2 of the Act of April 28, 1904 (33 Stat., 547), commonly known as the Kinkaid Act, to read as follows:

Sec. 2. That entrymen under the homestead laws of the United States within the territory above described who own and occupy the lands heretofore entered by them may, under the provisions of this Act and subject to its conditions, enter other lands contiguous to their said homestead entry, which shall not, with the land so already entered, owned and occupied, exceed in the aggregate six hundred and forty acres, and residence continued and improvements made upon the original homestead, subsequent to the making of the additional entry shall be accepted as equivalent to actual resi-



dence and improvements made upon the additional land so entered, but final entry shall not be allowed of such additional land until five years after first entering the same, except in favor of entrymen entitled to credit for military service.

This amendment did not affect sections 1 and 3 of the Kinkaid Act, which read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after sixty days after the approval of this Act entries made under the homestead laws in the State of Nebraska west and north of the following line, to wit: Beginning at a point on the boundary line between the States of South Dakota and Nebraska where the first guide meridian west of the sixth principal meridian strikes said boundary; thence running south along said guide meridian to its intersection with the fourth standard parallel north of the base line between the States of Nebraska and Kansas; thence west along said fourth standard parallel to its intersection with the second guide meridian west of the sixth principal meridian; thence south along said guide meridian to its intersection with the third standard parallel north of the said base line; thence west along said third standard parallel to its intersection with the range line between ranges twenty-five and twenty-six west of the sixth principal meridian; thence south along said line to its intersection with the second standard parallel north of the said base line; thence west on said standard parallel to its intersection with the range line between ranges thirty and thirty-one west; thence south along said line to its intersection with the boundary line between the States of Nebraska and Kansas, shall not exceed in area six hundred and forty acres, and shall be as nearly compact in form as possible, and in no event over two miles in extreme length: Provided, That there shall be excluded from the provisions of this Act such lands within the territory herein described as in the opinion of the Secretary of the Interior it may be reasonably practicable to irrigate under the national irrigation law, or by private enterprise; and that said Secretary shall, prior to the date above mentioned, designate and exclude from entry under this Act the lands, particularly along the North Platte River, which in his opinion it may be possible to irrigate as aforesaid; and shall thereafter, from time to time, open to entry under this Act any of the lands so excluded, which upon further investigation, he may conclude can not be practically irrigated in the manner aforesaid.

Sec. 3. That the fees and commissions on all entries under this Act shall be uniformly the same as those charged under the present law for a maximum entry at the minimum price. That the commutation provisions of the homestead law shall not apply to entries under this Act, and at the time of making final proof the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than \$1.25 per acre for each acre included in his entry: Provided, That a former homestead entry shall not be a bar to the entry under the provisions of this Act of a tract which, together with the former entry, shall not exceed 640 acres: Provided, That any former homestead entryman who shall be entitled to an additional entry under section 2 of this Act shall have for ninety days after the passage of this Act

the preferential right to make additional entry as provided in said section.

All general instructions heretofore issued under this Act, and the instructions issued under the supplemental Act of March 2, 1907 (34 Stat., 1224), (32 L. D., 87, and 546; 37 L. D., 225), are hereby modified and reissued as follows:

1. It is directed by the law that in that portion of the State of Nebraska lying west and north of the line described therein, which was marked in red ink upon maps transmitted with said circular, upon and after June 28, 1904, except for such lands as might be thereafter and prior to said excluded under the proviso contained in the first section thereof, homestead entries may be made for and not to exceed 640 acres, the same to be in as nearly a compact form as possible, and must not in any event exceed two miles in extreme length.

2. Under the provisions of the second section, a person who within the described territory has made entry prior to May 29, 1908, under the homestead laws of the United States, and who now owns and occupies the lands theretofore entered by him, and is not otherwise disqualified, may make an additional entry of a quantity of land contiguous to his said homestead entry, which, added to the area of the original entry, shall make an aggregate area not to exceed 640 acres; and he will not be required to reside upon the additional land so entered, but residence continued and improvements made upon the original homestead entry subsequent to the making of the additional entry will be accepted as equivalent to actual residence and improvements on the land covered by the additional entry. But residence either upon the original homestead or the additional land entered must be continued for the period of five years from the date of the additional entry, except that entrymen may claim and receive credit on that period for the length of their military service, not exceeding four years.

3. A person who has a homestead entry upon which final proof has not been submitted and who makes additional entry under the provisions of section 2 of the Act, will be required to submit his final proof on the original entry within the statutory period therefor, and final proof upon the additional entry must also be submitted within the statutory period from date of that entry.

4. Such additional entry must be for contiguous lands and the tracts embraced therein must be in as compact form as possible, and the extreme length of the combined entries must not in any event exceed two miles.

5. In accepting entries under this Act compliance with the requirement thereof as to compactness of form should be determined by the relative location of the vacant and unappropriated lands, rather than by the quality and desirability of the desired tracts.

6. By the first proviso of section 3 any person who made a homestead entry either within the tract above described or elsewhere prior to his application for entry under this Act, if no other disqualification exists, will be allowed to make an additional entry for a quantity of land which, added to the area of the land embraced in the former entry, shall not exceed 640 acres, but residence upon and cultivation of the additional land will be required to be made and proved as in ordinary homestead entries. But the appli-



cation of one who has an existing entry and seeks to make an additional entry under said proviso, can not be allowed unless he has either abandoned his former entry or has so perfected his right thereto as to be under no further obligation to reside thereon; and his qualifying status in these and other respects should be clearly set forth in his application.

7. Under said Act no bar is interposed to the making of second homesteads for the full area of 640 acres by parties entitled thereto under existing laws, and applications therefor will be considered under the instructions of the respective laws under which they are made.

8. Upon final proof, which may be made after five years and within seven years from date of entry, the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than \$1.25 per acre for each acre, and such proof must also show residence upon and cultivation of the land for the five-year period as in ordinary homestead entries, but credit for military service may be claimed and given under the supplemental Act mentioned above.

9. In the making of final proofs the homestead-proof form will be used, modified when necessary in case of additional entries made under the provisions of section 2.

10. It is provided by section 3 that the fees and commissions on all entries under the Act shall be uniformly the same as those charged under the present law for a maximum entry at the minimum price, viz: At the time the application is made \$14, and at the time of making final proof \$4, to be payable without regard to the area embraced in the entry.

11. In case that the combined area of the subdivisions selected should, upon applying the rule of approximation thereto, be found to exceed in area the aggregate of 640 acres, the entryman will be required to pay the minimum price per acre for the excess in area.

12. Entries under this Act are not subject to the commutation provisions of the homestead law.

13. In the second proviso of section 3 entrymen who had made their entries prior to April 28, 1904, were allowed a preferential right for 90 days thereafter to make the additional entry allowed by section 2 of the law.

14. The supplemental act, approved March 2, 1907 (34 Stat., 1224), reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all qualified entrymen who, during the period beginning on the twenty-eighth day of April, nineteen hundred and four, and ending on the twenty-eighth day of June, nineteen hundred and four, made homestead entry in the State of Nebraska within the area affected by an Act entitled "An Act to amend the homestead laws as to certain unappropriated and unreserved public lands in Nebraska," approved April twenty-eighth, nineteen hundred and four, shall be entitled to all the benefits of said Act as if their entries had been made prior or subsequent to the above-mentioned dates, subject to all existing rights.

Sec. 2. That the benefits of military service in the Army or Navy of the United States granted under the homestead laws shall

apply to entries made under the aforesaid Act, approved April twenty-eighth, nineteen hundred and four, and all homestead entries hereafter made within the territory described in the aforesaid Act shall be subject to all the provisions thereof.

Sec. 3. That within the territory described in said Act approved April twenty-eighth, nineteen hundred and four, it shall be lawful for the Secretary of the Interior to order into market and sell under the provisions of the laws providing for the sale of isolated or disconnected tracts or parcels of land any isolated or disconnected tract not exceeding three quarter sections in area: Provided, That not more than three quarter sections shall be sold to any one person. (See Isolated Tracts.)

**CIRCULAR ON RESTORATION OF LOST OR OBLITERATED CORNERS AND SUBDIVISION OF SECTIONS—GENERAL LAND OFFICE, MARCH 14, 1901.**

**Penalties for Destroying Corner Monuments.**

To aid in the protection of all evidences of public-land surveys, the following law was enacted as a clause in chapter 398, 29 United States Statutes, page 343, which was approved June 10, 1896:

Provided further, That hereafter it shall be unlawful for any person to destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, or any Government line of survey, or to cut down any witness tree, or any tree blazed to mark the line of a Government survey, or to deface, change, or remove any monument or bench mark of any Government survey. That any person who shall offend against any of the provisions of this paragraph shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court shall be fined not exceeding two hundred and fifty dollars, or be imprisoned not more than one hundred days. All the fines accruing under this paragraph shall be paid into the Treasury and the informer in each case of conviction shall be paid the sum of twenty-five dollars.

Department of the Interior,  
General Land Office,  
Washington, D. C., March 14, 1901.

The increasing number of letters from county and local surveyors received at this office making inquiry as to the proper method of restoring to their original position lost or obliterated corners marking the survey of the public lands of the United States, or such as have been willfully or accidentally moved from their original position, have rendered the preparation of the following general rules necessary, particularly as in a very large number of cases the immediate facts necessary to a thorough and intelligent understanding are omitted. Moreover, surveys having been made under the authority of different acts of Congress, different results have been obtained, and no special law has been enacted by that authority covering and regulating the subject of the above-named inquiries. Hence, the general rule here given must be considered merely as an expression of the opinion of this office on the subject, based, however, upon the spirit of the several acts of Congress authorizing the surveys, as construed by this office, and by United States court decisions. When cases arise which are not covered by these rules, and the advice of this office is desired, the letter of inquiry should always contain a description of the particular corner, with reference to the township, range, and section of the public surveys, to enable this office to consult the record.

An obliterated corner is one where no visible evidence remains of the work of the original surveyor in establishing it. Its location may, however, have been preserved beyond all question by acts of landowners, and by the memory of those who knew and recollect the true situs of the original monument. In such cases it is not a lost corner.

A lost corner is one whose position can not be determined, beyond reasonable doubt, either from original marks or reliable external evidence.

Surveyors sometimes err in their decision whether a corner is to be treated as lost or only obliterated.

Surveyors who have been United States deputies should bear in mind that



in their private capacity they must act under somewhat different rules of law from those governing original surveys, and should carefully distinguish between the provisions of the statute which guide a Government deputy and those which apply to retracement of lines once surveyed. The failure to observe this distinction has been prolific of erroneous work and injustice to landowners.

To restore extinct boundaries of the public lands correctly, the surveyor must have some knowledge of the manner in which townships were subdivided by the several methods authorized by Congress. Without this knowledge he may be greatly embarrassed in the field, and is liable to make mistakes invalidating this work, and leading eventually to serious litigation. It is believed that the following synopsis of the several acts of Congress regulating the surveys of the public lands will be of service to county surveyors and others, and will help to explain many of the difficulties encountered by them in the settlement of such questions.

Compliance with the provisions of Congressional legislation at different periods has resulted in two sets of corners being established on township lines at one time; at other times three sets of corners have been established on range lines; while the system now in operation makes but one set of corners on township boundaries, except on standard lines—i. e., base and correction lines, and in some exceptional cases.

The following brief explanation of the modes which have been practiced will be of service to all who may be called upon to restore obliterated boundaries of the public land surveys.

Where two sets of corners were established on township boundaries, one set was planted at the time the exteriors were run, those on the north boundary belonging to the sections and quarter sections north of said line, and those on the west boundary belonging to the sections and quarter sections west of that line. The other set of corners was established when the township was subdivided. This method, as stated, resulted in the establishment of two sets of corners on all four sides of the townships.

Where three sets of corners were established on the range lines, the subdivisional surveys were made in the above manner, except that the east and west section lines, instead of being closed upon the corners previously established on the east boundary of the township, were run due east from the last interior section corner, and new corners were erected at the points of intersection with the range line.

The method now in practice requires section lines to be initiated from the corners on the south boundary of the township, and to close on existing corners on the east, north, and west boundaries of the township, except when the north boundary is a base line or standard parallel.

But in some cases, for special reasons, an opposite course of procedure has been followed, and subdivisional work has been begun on the north boundary and has been extended southward and eastward or southward and westward.

In the more recent general instructions, greater care has been exercised to secure rectangular subdivisions by fixing a strict limitation that no new township exteriors or section lines shall depart from a true meridian or east and west lines more than twenty-one minutes of arc; and that where a random line is found liable to correction beyond this limit, a true line on a cardinal course must be run, setting a closing corner on the line to which it closes.

This produces, in new surveys closing to irregular old work, a great number of exteriors marked by a double set of corners. All retracing surveyors should proceed under these new conditions with full knowledge of the field notes and exceptional methods of subdivision.

### Synopsis of Acts of Congress.

The first enactment in regard to the surveying of the public lands was an ordinance passed by the Congress of the Confederation May 20, 1785, prescribing the mode for the survey of the "Western Territory," and which provided that said territory should be divided into "townships of six miles square, by lines running due north and south, and others crossing them at right angles" as near as might be.

Ordinance of the Congress of the Confederation of May 20, 1785. U. S. Land Laws, p. 349. Edition 1828.

It further provided that the first line running north and south should begin on the Ohio River, at a point due north from the western terminus of a line

run as the south boundary of the State of Pennsylvania, and the first line running east and west should begin at the same point and extend through the whole territory. In these initial surveys only the exterior lines of the townships were surveyed, but the plats were marked by subdivisions into sections 1 mile square, numbered from 1 to 36, commencing with No. 1 in the southeast corner of the township, and running from south to north in each tier to No. 36 in the northwest corner of the township; mile corners were established on the township lines. The region embraced by the surveys under this law forms a part of the present State of Ohio, and is generally known as "the Seven Ranges."

The Federal Congress passed a law, approved May 18, 1796, in regard to surveying the public domain, which applied to "the territory northwest of the River Ohio, and above the mouth of the Kentucky River."

Act of May 18, 1796. U. S. Statutes at Large, vol. 1, p. 465. Section 2395, U. S. Revised Statutes.

Section 2 of said Act provided for dividing such lands as had not been already surveyed or disposed of "by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of 6 miles square," etc. It also provided that "one-half of said townships, taking them alternately, should be subdivided into sections containing, as nearly as may be, 640 acres each, by running through the same each way parallel lines at the end of every two miles; and by marking a corner on each of said lines at the end of every mile." The Act also provided that "the sections shall be numbered, respectively, beginning with the number one in the northeast section, and proceeding west and east alternately through the township, with progressive numbers till the thirty-sixth be completed." This method of numbering sections is still in use.

An act amendatory of the foregoing, approved May 10, 1800, required the "townships west of the Muskingum, which are directed to be sold in quarter townships, to be subdivided into half sections of 320 acres each, as nearly as may be, by running parallel lines through the same from east to west, and from south to north, at the distance of one mile from each other, and marking corners, at the distance of each half mile on the lines running from east to west, and at the distance of each mile on those running from south to north. And the interior lines of townships intersected by the Muskingum, and of all townships lying east of that river, which have not been heretofore actually subdivided into sections, shall also be run and marked \* \* \*. And in all cases where the exterior lines of the townships thus to be subdivided into sections or half sections, shall exceed or shall not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western or northern ranges of sections or half-sections in such townships, according as the error may be in running the lines from east to west or from south to north." Said Act also provided that the northern and western tiers of sections should be sold as containing only the quantity expressed on the plats, and all others as containing the complete legal quantity.

The Act approved June 1, 1796, "regulating the grants of land appropriated for military services," etc., provided for dividing the "United States Military Tract," in the State of Ohio, into townships 5 miles square, each to be subdivided into quarter townships containing 4,000 acres.

Section 6 of the act approved March 1, 1800, amendatory of the foregoing act, enacted that the Secretary of the Treasury was authorized to subdivide the quarter townships into lots of 100 acres, bounded as nearly as practicable by parallel lines 160 perches in length by 100 perches in width. These subdivisions into lots, however, were made upon the plats in the office of the Secretary of the Treasury, and the actual survey was only made at a subsequent time when a sufficient number of such lots had been located to warrant the survey. It thus happened, in some instances, that when the survey came to be made the plat and survey could not be made to agree, and that fractional lots on plats were entirely crowded out. A knowledge of this fact may explain some of the difficulties met with in the district thus subdivided.

Act of March 1, 1800. U. S. Statutes at Large, vol. 2, p. 14.

The act of Congress approved February 11, 1805, directs the subdivision of the public lands into quarter sections, and provides that all corners marked



in the field shall be established as the proper corners of the sections or quarter sections which they were intended to designate, and that corners of half and quarter sections not marked shall be placed as nearly as possible "equidistant from those two corners which stand on the same line." This act further provides that "the boundary lines actually run and marked" (in the field) "shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines as returned by either of the surveyors aforesaid shall be held and considered as the true length thereof. And the boundary lines which shall not have been actually run and marked as aforesaid shall be ascertained by running straight lines from the established corners to the opposite corresponding corners, but in those portions of the fractional townships where no such opposite or corresponding corners have been or can be fixed, the said boundary lines shall be ascertained by running from the established corners due north and south, or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township."

The Act of Congress approved April 24, 1820, provides for the sale of public lands in half-quarter sections, and requires that "in every case of the division of a quarter section the line for the division thereof shall run north and south," "and fractional sections, containing 160 acres and upwards, shall in like manner, as nearly as practicable, be subdivided into half quarter sections under such rules and regulations as may be prescribed by the Secretary of the Treasury; but fractional sections containing less than 160 acres shall not be divided."

The Act of Congress approved May 24, 1824, provides "that whenever, in the opinion of the President of the United States, a departure from the ordinary mode of surveying land on any river, lake, bayou, or water course would promote the public interest, he may direct the surveyor-general in whose district such land is situated, and where the change is intended to be made, under such rules and regulations as the President may prescribe, to cause the lands thus situated to be surveyed in tracts of two acres in width, fronting on any river, bayou, lake, or water course, and running back the depth of forty acres."

The Act of Congress approved April 5, 1832, directed the subdivision of the public lands into quarter-quarter sections; that in every case of the division of a half-quarter section the dividing line should run east and west, and that fractional sections should be subdivided, under rules and regulations prescribed by the Secretary of the Treasury. Under the latter provision the Secretary directed that fractional sections containing less than 160 acres, or the residuary portion of a fractional section, after the subdivision into as many quarter-quarter sections as it is susceptible of, may be subdivided into lots, each containing the quantity of a quarter-quarter section as nearly as practicable, by so laying down the line of subdivision that they shall be 20 chains wide, which distances are to be marked on the plat of subdivision, as are also the areas of the quarter-quarters and residuary fractions.

These two acts last mentioned provided that the corners and contents of half-quarter and quarter-quarter sections should be ascertained as nearly as possible in the manner and on the principles prescribed in the Act of Congress approved February 11, 1805.

### General Rules.

From the foregoing synopsis of Congressional legislation it is evident—

1st. That the boundaries of the public lands established and returned by the duly appointed Government surveyors, when approved by the surveyors-general and accepted by the Government, are unchangeable.

2d. That the original township, section, and quarter-section corners established by the Government surveyors must stand as the true corners which they were intended to represent, whether the corners be in place or not.

3d. That quarter-quarter corners not established by the Government surveyors shall be placed on the straight lines joining the section and quarter-section corners and midway between them, except on the last half mile of

Act of February 11, 1805. U. S. Statutes at Large, vol. 2, p. 313. Section 2306, U. S. Revised Statutes.

Act of April 24, 1820. U. S. Statutes at Large, vol. 3, p. 566. Section 2397, U. S. Revised Statutes.

Act of May 24, 1824. U. S. Statutes at Large, vol. 4, p. 34.

Act of April 5, 1832. U. S. Statutes at Large, vol. 4, p. 503. Section 2397, U. S. Revised Statutes.

section lines closing on the north and west boundaries of the township, or on other lines between fractional sections.

4th. That all subdivisional lines of a section running between corners established in the original survey of a township must be straight lines, running from the proper corner in one section line to its opposite corresponding corner in the opposite section line.

5th. That in a fractional section where no opposite corresponding corner has been or can be established, any required subdivision line of such section must be run from the proper original corner in the boundary line due east and west, or north and south, as the case may be, to the water course, Indian reservation, or other boundary of such section, with due parallelism to section lines.

From the foregoing it will be plain that extinct corners of the Government surveys must be restored to their original locations, whenever it is possible to do so; and hence resort should always be first had to the marks of the survey in the field. The locus of the missing corner should be first identified on the ground by the aid of the mound, pits, line trees, bearing trees, etc., described in the field notes of the original survey.

The identification of mounds, pits, witness trees, or other permanent objects noted in the field notes of survey, affords the best means of relocating the missing corner in its original position. If this can not be done, clear and convincing testimony of citizens as to the locality it originally occupied should be taken, if such can be obtained. In any event, whether the locus of the corner be fixed by the one means or the other, such locus should always be tested and confirmed by measurements to known corners. No definite rule can be laid down as to what shall be sufficient evidence in such cases, and much must be left to the skill, fidelity, and good judgment of the surveyor in the performance of his work.

#### Exceptional Cases.

When new measurements are made on a single line to determine the position thereon for a restored lost corner (for example, a quarter-section corner on line between two original section corners), or when new measurements are made between original corners on two lines for the purpose of fixing by their intersection the position of a restored missing corner (for example, a corner common to four sections or four townships), it will almost invariably happen that discrepancies will be developed between the new measurements and the original measurements in the field notes. When these differences occur the surveyor will in all cases establish the missing corner by proportionate measurements on lines conforming to the original field notes and by the method followed in the original survey. From this rule there can be no departure, since it is the basis upon which the whole operation depends for accuracy and truth.

In cases where the relocated corner can not be made to harmonize with the field notes in all directions, and unexplained error in the first survey is apparent, it sometimes becomes the task of the surveyor to place it according to the requirements of one line and against the calls of another line. For instance, if the line between sections 30 and 31, reported 78 chains long, would draw the missing corner on range line 1 chain eastward out of range with the other exterior corners, the presumption would be strong that the range line had been run straight and the length of the section line wrongly reported, because experience shows that west random line are regarded as less important than range lines and more liable to error.

Again, where a corner on a standard parallel has been obliterated, it is proper to assume that it was placed in line with other corners, and if an anomalous length of line reported between sections 3 and 4 would throw the closing corner into the northern township, a surveyor would properly assume that the older survey of the standard line is to control the length of the later and minor line. The marks or corners found on such a line closing to a standard parallel fix its location, but its length should be limited by its actual intersection, at which point the lost closing corner may be placed.

The strict rule of the law that "all corners marked in the field shall be established as the corners which they were intended to designate," and the further rule that "the length of lines returned by the surveyors shall be held and considered as the true length thereof," are found in some cases to be impossible of fulfillment in all directions at once, and a surveyor is obliged to choose, in his own discretion, which of two or more lines must yield, in order to permit the rules to be applied at all.



In a case of an erroneous but existing closing corner, which was set some distance out of the true State boundary of Missouri and Kansas, it was held by this office that a surveyor subdividing the fractional section should preserve the boundary as a straight line, and should not regard said closing corner as the proper corner of the adjacent fractional lots. The said corner was considered as fixing the position of the line between two fractional sections, but that its length extended to a new corner to be set on the true boundary line. The surveyor should therefore preserve such an original corner as evidence of the line; but its erroneous position can not be allowed to cause a crook between mile corners of the original State boundary.

It is only in cases where it is manifestly impossible to carry out the literal terms of the law, that a surveyor can be justified in making such a decision.

The principle of the preponderance of one line over another of less importance has been recognized in the rule for restoring a section corner common to two townships in former editions of this circular. The new corner should be placed on the township line; and measurements to check its position by distances to corners within the townships are useful to confirm it if found to agree well, but should not cause it to be placed off the line if found not to agree, if the general condition of the boundary supports the presumption that it was properly aligned.

#### To Restore Lost or Obliterated Corners.

1. To restore corners on base lines and standard parallels.—Lost or obliterated standard corners will be restored to their original positions on a base line, standard parallel, or correction line, by proportionate measurements on the line, conforming as nearly as practicable to the original field notes and joining the nearest identified original standard corners on opposite sides of the missing corner or corners, as the case may be.

(a) The term "standard corners" will be understood to designate standard township, section, quarter-section, and meander corners; and, in addition, closing corners, as follows: Closing corners used in the original survey to determine the position of a standard parallel, or established during the survey of the same, will, with the standard corners, govern the alinement and measurements made to restore lost or obliterated standard corners; but no other closing corners will control in any manner the restoration of standard corners on a base line or standard parallel.

(b) A lost or obliterated closing corner from which a standard parallel has been initiated or to which it has been directed will be reestablished in its original place by proportionate measurement from the corners used in the original survey to determine its position. Measurements from corners on the opposite side of the parallel will not control in any manner the relocation of said corner.

(c) A missing closing corner originally established during the survey of a standard parallel as a corner from which to project surveys south will be restored to its original position by considering it a standard corner and treating it accordingly.

(d) Therefore, paying attention to the preceding explanations, we have for the restoration of one or several corners on a standard parallel, and for general application to all other surveyed lines, the following proportion:

As the original field-note distance between the selected known corners is to the new measure of said distance, so is the original field-note length of any part of the line to the required new measure thereof.

The sum of the computed lengths of the several parts of a line must be equal to the new measure of the whole distance.

(e) As has been observed, existing original corners can not be disturbed; consequently discrepancies between the new and the original field-note measurements of the line joining the selected original corners will not in any manner affect measurements beyond said corners, but the differences will be distributed proportionately to the several intervals embraced in the line in question.

(f) After having checked each new location by measurement to the nearest known corners, new corners will be established permanently and new bearings and measurements taken to prominent objects, which should be of as permanent a character as possible, and the same recorded for future reference.

2. Restoration of township corners common to four townships.—Two cases should be clearly recognized: 1st. Where the position of the original township

corner has been made to depend upon measurements on two lines at right angles to each other. 2d. Where the original corner has been located by measurements on one line only; for example, on a guide meridian.

(a) For restoration of a township corner originally subject to the first condition: A line will first be run connecting the nearest identified original corners on the meridional township lines, north and south of the missing corner, and a temporary corner will be placed at the proper proportionate distance. This will determine the corner in a north and south direction only.

Next, the nearest original corners on the latitudinal township lines will be connected and a point thereon will be determined in a similar manner, independent of the temporary corner on the meridional line. Then through the first temporary corner run a line east (or west) and through the second temporary corner a line north (or south), as relative situations may suggest. The intersection of the two lines last run will define the position of the restored township corner, which may be permanently established.

(b) The restoration of a lost or obliterated township corner established under the second conditions, i. e., by measurements, on a single line, will be effected by proportionate measurements on said line, between the nearest identified original corners on opposite sides of the missing township corner, as before described.

3. Reestablishment of corners common to two townships.—The two nearest known corners on the township line, the same not being a base or a correction line, will be connected as in case No. 1, by a right line, and the missing corner established by proportionate distance as directed in that case; the location thus found will be checked upon by measurements to nearest known section or quarter-section corners north and south, or east and west, of the township line, as the case may be.

4. Reestablishment of closing corners.—Measure from the quarter-section, section, or township corner east or west, as the case may be, to the next preceding or succeeding corner in the order of original establishment, and reestablish the missing closing corner by proportionate measurement. The line upon which the closing corner was originally established should always be remeasured, in order to check upon the correctness of the new location. See pages 8, 12, and 13 for details.

5. Reestablishment of interior section corners.—This class of corners should be reestablished in the same manner as corners common to four townships. In such cases, when a number of corners are missing on all sides of the one sought to be reestablished, the entire distance must, of course, be remeasured between the nearest existing recognized corners both north and south, and east and west, in accordance with the rule laid down, and the new corner reestablished by proportionate measurement. The mere measurement in any one of the required directions will not suffice, since the direction of the several section lines running northward through a township, or running east and west, are only in the most exceptional cases true prolongations of the alinement of the section lines initiated on the south boundary of the township; while the east and west lines running through the township, and theoretically supposed to be at right angles with the former, are seldom in that condition, and the alinements of the closing lines on the east and west boundaries of the township, in connection with the interior section lines, are even less often in accord. Moreover, the alinement of the section line itself from corner to corner, in point of fact, also very frequently diverges from a right line, although presumed to be such from the record contained in the field notes and so designated on the plats, and becomes either a broken or a curved line. This fact will be determined, in a timbered country, by the blazes which may be found upon trees on either side of the line, and although such blazed line will not strictly govern as to the absolute direction assumed by such line, it will assist very materially in determining its approximate direction, and should never be neglected in retracements for the reestablishment of lost corners of any description. Sight trees described in the field notes, together with the recorded distances to same, when fully identified, will, it has been held, in one or more States, govern the line itself, even when not in a direct or straight line between established corners, which line is then necessarily a broken line by passing through said sight trees. Such trees, when in existence and properly identified beyond a question of doubt, will very materially assist in evidencing the correct relocation of a missing corner. It is greatly to be regretted that the earlier field notes of survey are so very meager in the notation of the topography found on the original line, which might in very many instances materially lessen a surveyor's labors in retracement of lines



and reestablishment of the required missing corner. In the absence of such sight trees and other evidence regarding the line, as in an open country, or where such evidence has been destroyed by time, the elements, or the progress of improvement, the line connecting the known corners should be run straight from corner to corner.

6. Reestablishment of quarter-section corners on township boundaries.—Only one set of quarter-section corners are actually marked in the field on township lines, and they are established at the time when the township exteriors are run. When double section corners are found, the quarter-section corners are considered generally as standing midway between the corners of their respective sections, and when required to be established or reestablished, as the case may be, they should be generally so placed; but great care should be exercised not to mistake the corners belonging to one township for those of another. After determining the proper section corners marking the line upon which the missing quarter-section corner is to be reestablished, and measuring said line, the missing quarter-section corner will be reestablished in accordance with the requirements of the original field notes of survey, by proportionate measurement between the section corners marking the line.

Where there are double sets of section corners on township and range lines, and the quarter-section corners for sections south of the township or east of the range lines are required to be established in the field, the said quarter-section corners should be so placed as to suit the calculation of areas of the quarter-sections adjoining the township boundaries as expressed upon the official township plat, adopting proportionate measurements when the present measurement of the north and west boundaries of the section differ from the original measurements.

7. Reestablishment of quarter-section corners on closing section lines between fractional sections.—This class of corners must be reestablished according to the original measurement of 40 chains from the last interior section corner. If the measurements do not agree with the original survey, the excess or deficiency must be divided proportionately between the two distances as expressed in the field notes of original survey. The section corner started from and the corner closed upon should be connected by a right line, unless the retracement should develop the fact that the section line is either a broken or curved line, as is sometimes the case.

8. Reestablishment of interior quarter-section corners.—In some of the older surveys these corners are placed at variable distances, in which case the field notes of the original survey must be consulted, and the quarter-section corner reestablished at proportionate distances between the corresponding section corners, in accordance therewith. The later surveys being more uniform and in stricter accordance with law, the missing quarter-section corner must be reestablished equidistant between the section corners marking the line, according to the field notes of the original survey. The remarks made under section 5, in relation to section lines, apply with full force here also; the caution there given not to neglect sight trees is equally applicable, since the proper reestablishment of the quarter-section corner may in some instances very largely depend upon its observance, and avoid one of the many sources of litigation.

9. Where double corners were originally established, one of which is standing, to reestablish the other.—It being remembered that the corners established when the exterior township lines were run, belong to the sections in the townships north and west of those lines, the surveyor must first determine beyond a doubt to which sections the existing corner belongs. This may be done by testing the courses and distances to witness trees or other objects noted in the original field notes of survey, and by remeasuring distances to known corners. Having determined to which township the existing corner belongs, the missing corner may be reestablished in line north or south of the existing corner as the case may be, at the distance stated in the field notes of the original survey, by proportionate measurement, and tested by retracement to the opposite corresponding corner of the section to which the missing section corner belongs. These double corners being generally not more than a few chains apart, the distance between them can be more accurately laid off, and it is considered preferable to first establish the missing corner as above, and check upon the corresponding interior corner, than to reverse the proceeding; since the result obtained is every way more accurate and satisfactory.

10. Where double corners were originally established, and both are miss-

ing, to reestablish the one established when the township line was run.—The surveyor will connect the nearest known corners on the township line by a right line, being careful to distinguish the section from the closing corners, and reestablish the missing corner at the point indicated by the field notes of the original survey by proportionate measurement. The corner thus restored will be common to two sections either north or west of the township boundary, and the section north or west, as the case may be, should be carefully retraced, thus checking upon the reestablished corner, and testing the accuracy of the result. It can not be too much impressed upon the surveyor that any measurements to objects on line noted in the original survey are means of determining and testing the correctness of the operation.

11. Where double corners were originally established, and both are missing, to reestablish the one established when the township was subdivided.—The corner to be reestablished being common to two sections south or east of the township line, the section line closing on the missing section corner should be first retraced to an intersection with the township line in the manner previously indicated, and a temporary corner established at the point of intersection. The township line will of course have been previously carefully retraced in accordance with the requirements of the original field notes of the survey, and marked in such manner as to be readily identified when reaching the same with the retraced section line. The location of the temporary corner planted at the point of intersection will then be carefully tested and verified by measurements to objects and known corners on the township line, as noted in the original field notes of survey, and the necessary corrections made in such relocation. A permanent corner will then be erected at the corrected location on the township line, properly marked and witnessed and recorded for future requirements.

12. Where triple corners were originally established on range lines, one or two of which have become obliterated, to reestablish either of them.—It will be borne in mind that only two corners were established as actual corners of sections, those established on the range line not corresponding with the subdivisional survey east or west of said range line. The surveyor will, therefore, first proceed to identify the existing corner or corners, as the case may be, and then reestablish the missing corner or corners in line north or south, according to the distances stated in the original field notes of survey in the manner indicated for the reestablishment of double corners, testing the accuracy of the result obtained, as hereinbefore directed in other cases. If, however, the distances between the triple corners are not stated in the original field notes of survey, as is frequently the case in the returns of older surveys, the range line should be first carefully retraced, and marked in a manner sufficiently clear to admit of easy identification upon reaching same during the subsequent proceedings. The section lines closing upon the missing corners must then be retraced in accordance with the original field notes of survey, in the manner previously indicated and directed, and the corners reestablished in the manner directed in the case of double corners. The surveyor can not be too careful, in the matter of retracement, in following closely all the recorded indications of the original line, and nothing, however slight, should be neglected to insure the correctness of the retracement of the original line; since there is no other check upon the accuracy of the reestablishment of the missing corners, unless the entire corresponding section lines are measured by proportional measurement and the result checked by a recalculation of the areas as originally returned, which, at best, is but a very poor check, because the areas expressed upon the margin of many plats of the older surveys are erroneously stated on the face of the plats, or have been carelessly calculated.

13. Where triple corners were originally established on range lines, all of which are missing, to reestablish same.—These corners should be reestablished in accordance with the foregoing directions, commencing with the corner originally established when the range line was run, establishing the same in accordance with previously given directions for restoring section and quarter-section corners; that is to say, by remeasuring between the nearest known corners on said township line, and reestablishing the same by proportionate measurement. The two remaining will then be reestablished in conformity with the general rules for reestablishment of double corners.

14. Reestablishment of meander corners.—Before proceeding with the reestablishment of missing meander corners, the surveyor should have carefully rechaind at least three of the section lines between known corners of the township within which the lost corner is to be relocated, in order to establish



the proportionate measurement to be used. This requirement of preliminary remeasurement of section lines must in no case be omitted; since it gives the only data upon which the fractional section line can be remeasured proportionately, the corner marking the terminus, or the meander corner, being missing, which it is intended to reestablish. The missing meander corner will be reestablished on the section or township line retraced in its original location, by the proportionate measurement found by the preceding operations, from the nearest known corner on such township or section line, in accordance with the requirements of the original field notes of survey.

Meander corners hold the peculiar position of denoting a point on line between landowners, without usually being the legal terminus or corner of the lands owned. Leading judicial decisions have affirmed that meander lines are not strictly boundaries, and do not limit the ownership to the exact areas placed on the tracts, but that said title extends to the water, which, by the plat, appears to bound the land.

As such water boundaries are, therefore, subject to change by the encroachment or recession of the stream or lake, the precise location of old meanders is seldom important, unless in States whose laws prescribe that dried lake beds are the property of the State.

Where the United States has disposed of the fractional lots adjacent to shores, it claims no marginal lands left by recession or found by reason of erroneous survey. The lines between landowners are therefore regarded as extended beyond the original meander line of the shore, but the preservation or relocation of the meander corner is important, as evidence of the position of the section line.

The different rules by which division lines should be run between private owners of riparian accretions are a matter of State legislation, and not subject to a general rule of this Office.

15. Fractional section lines.—County and local surveys being sometimes called upon to restore fractional sectional lines closing upon Indian, military, or other reservations, private grants, etc., such lines should be restored upon the same principles as directed in the foregoing pages, and checked whenever possible upon such corners or monuments as have been placed to mark such boundary lines.

In some instances corners have been moved from their original position, either by accident or design, and county surveyors are called upon to restore such corners to their original positions, but, owing to the absence of any and all means of identification of such location, are unable to make the result of their work acceptable to the owners of the lands affected by such corner. In such cases the advice of this Office has invariably been to the effect that the relocation of such corner must be made in accordance with the orders of a court of competent jurisdiction, the United States having no longer any authority to order any changes where the lands affected by such corner have been disposed of.

### Records.

The original evidences of the public-land surveys in the following States have been transferred, under the provisions of sections 2218, 2219, and 2220, United States Revised Statutes, to the State authorities, to whom application should be made for such copies of the original plats and field notes as may be desired, viz:

Alabama: Secretary of State, Montgomery.  
 Arkansas: Commissioner of State Lands, Little Rock.  
 Illinois: Auditor of State, Springfield.  
 Indiana: Auditor of State, Indianapolis.  
 Iowa: Secretary of State, Des Moines.  
 Kansas: Auditor of State and Register of State Lands, Topeka.  
 Michigan: Commissioner of State Land Office, Lansing.  
 Mississippi: Commissioner of State Lands, Jackson.  
 Missouri: Secretary of State, Jefferson City.  
 Nebraska: Commissioner of Public Lands and Buildings, Lincoln.  
 Ohio: Auditor of State, Columbus.  
 Wisconsin: Commissioners of Public Lands, Madison.

In other public-land States the original field notes and plats are retained in the offices of the United States surveyors general.

### Subdivision of Sections.

1 This Office being in receipt of many letters making inquiry in regard to the

proper method of subdividing sections of the public lands, the following general rules have been prepared as a reply to such inquiries. The rules for subdivision are based upon the laws governing the survey of the public lands. When cases arise which are not covered by these rules, and the advice of this office in the matter is desired, the letter of inquiry should, in every instance, contain a description of the particular tract or corner, with reference to township, range, and section of the public surveys, to enable the office to consult the record; also a diagram showing conditions found:

1. Subdivision of sections into quarter sections.—Under the provisions of the Act of Congress approved February 11, 1805, the course to be pursued in the subdivision of sections into quarter sections is to run straight lines from the established quarter-section corners, United States surveys, to the opposite corresponding corners. The point of intersection of the lines thus run will be the corner common to the several quarter sections, or, in other words, the legal center of the section.

(a) Upon the lines closing on the north and west boundaries of a township, the quarter-section corners are established by the United States deputy surveyors at 40 chains to the north or west of the last interior section corners, and the excess or deficiency in the measurement is thrown into the half mile next to the township or range line, as the case may be.

(b) Where there are double sets of section corners on township and range lines, the quarter corners for the sections south of the township lines and east of the range lines are not established in the field by the United States deputy surveyors, but in subdividing such sections said quarter corners should be so placed as to suit the calculations of the areas of the quarter sections adjoining the township boundaries as expressed upon the official plat, adopting proportionate measurements where the new measurements of the north or west boundaries of the section differ from the original measurements.

2. Subdivision of fractional sections.—Where opposite corresponding corners have not been or can not be fixed, the subdivision lines should be ascertained by running from the established corners due north, south, east, or west lines, as the case may be, to the water course, Indian boundary line, or other boundary of such fractional section.

(a) The law presumes the section lines surveyed and marked in the field by the United States deputy surveyors to be due north and south or east and west lines, but in actual experience this is not always the case. Hence, in order to carry out the spirit of the law, it will be necessary in running the subdivisional lines through fractional sections to adopt mean courses where the section lines are not due lines, or to run the subdivision line parallel to the east, south, west, or north boundary of the section, as conditions may require, where there is no opposite section line.

3. Subdivision of quarter sections into quarter quarters.—Preliminary to the subdivision of quarter sections, the quarter-quarter corners will be established at points midway between the section and quarter-section corners, and between quarter corners and the center of the section, except on the last half mile of the lines closing on the north or west boundaries of a township, where they should be placed at 20 chains, proportionate measurement, to the north or west of the quarter-section corner.

(a) The quarter-quarter section corners having been established as directed above, the subdivision lines of the quarter section will be run straight between opposite corresponding quarter-quarter section corners on the quarter-section boundaries. The intersection of the lines thus run will determine the place for the corner common to the four quarter-quarter sections.

4. Subdivision of fractional quarter sections.—The subdivision lines of fractional quarter sections will be run from properly established quarter-quarter section corners (paragraph 3) due north, south, east, or west, to the lake, water course, or reservation which renders such tracts fractional, or parallel to the east, south, west, or north boundary of the quarter section, as conditions may require. (See paragraph 2 (a).)

5. Proportionate measurement.—By "proportionate measurement," as used in this circular, is meant a measurement having the same ratio to that recorded in the original field notes as the length of chain used in the new measurement has to the length of chain used in the original survey, assuming that the original and new measurements have been correctly made.

For example: The length of the line from the quarter-section corner on the west side of sec. 2, T. 24 N., R. 14 E, Wisconsin, to the north line of the township, by the United States deputy surveyor's chain, was reported as 45.40



chains, and by the county surveyor's measure is reported as 42.90 chains; then the distance which the quarter-quarter section corner should be located north of the quarter-section corner would be determined as follows:

As 45.40 chains, the Government measure of the whole distance, is to 42.90 chains, the county surveyor's measure of the same distance, so is 20.00 chains, original measurement, to 18.90 chains by the county surveyor's measure, showing that by proportionate measurement in this case the quarter-quarter section corner should be set at 18.90 chains north of the quarter-section corner, instead of 20.00 chains north of such corner, as represented on the official plat. In this manner the discrepancies between original and new measurements are equitably distributed.

Binger Hermann,  
Commissioner.

Department of the Interior,  
March 14, 1901.

Approved:  
E. A. Hitchcock,  
Secretary.

## UNITED STATES MINING LAWS, AND REGULATIONS THEREUNDER, RELATIVE TO THE RESERVATION, EX- PLORATION, LOCATION, POSSESSION, PURCHASE, AND PATENTING OF THE MINERAL LANDS IN THE PUBLIC DOMAIN.

Approved March 29, 1909. 37 L. D., 728-766.

For Index see Page ~~635~~ (436)

Department of the Interior,  
General Land Office.

### LAWS.

#### TITLE XXXII, CHAPTER 6, REVISED STATUTES.

##### Mineral Lands and Mining Resources.

Sec. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Sec. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Mineral lands reserved.

4 July, 1866,  
c. 166, s. 5, v.

14, p. 86.  
Mineral lands open to purchase by citizens.

10 May, 1872,  
c. 152, s. 1, v.  
17, p. 91.

Sec. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim

Length of mining claims upon veins or lodes.

10 May, 1872,  
c. 152, s. 2, v.  
17, p. 91.

located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Proof of citizenship.

10 May, 1872,  
c. 152, s. 7, v.  
17, p. 94.

Sec. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locators' rights of possession and enjoyment.

10 May, 1872,  
c. 152, s. 3, v.  
17, p. 91.

Sec. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels, rights of.

10 May, 1872,  
c. 152, s. 4, v.  
17, p. 92.

Sec. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel,



to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Sec. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by

Regulations  
made by miners.

10 May, 1872.  
c. 152, s. 5, v.  
17, p. 92.

this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Patents for  
mineral lands,  
how obtained.

10 May, 1872.  
c. 152, s. 6, v.  
17, p. 92.

Sec. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The Register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the Register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the Register and the Receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.



Sec. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the Register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the Receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the Register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the Surveyor-General, whereupon the Register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

Adverse claim,  
proceedings on.  
10 May, 1872,  
c. 152, s. 7, v.  
17, p. 93.

Sec. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral

Description of  
mining vein or  
lode claims.

10 May, 1872,  
c. 152, s. 8, v.  
17, p. 94.  
Amended Apr.  
28, 1904 (33  
Stat., 545).

Patents to  
conform to official  
monuments.  
Monuments to  
govern descriptions.

lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Pending applications; existing rights.

10 May, 1872,  
c. 152, s. 9, v.  
17, p. 94.

Sec. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Conformity of placer claims to surveys, limit of.

9 July, 1870,  
c. 235, s. 12, v.  
16, p. 217.

Sec. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions of ten-acre tracts; maximum of placer locations.

9 July, 1870,  
c. 235, s. 12, v.  
16, p. 217.

Sec. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Conformity of placer claims to surveys, limitation of claims.

10 May, 1872,  
c. 152, s. 10, v.  
17, p. 94.

Sec. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys,



and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead preemption purposes.

Sec. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Sec. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Sec. 2334. The surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together

What evidence of possession, etc., to establish a right to a patent.

9 July, 1870,  
c. 235, s. 13, v.  
16, p. 217.

Proceedings for patent for placer claim, etc.

10 May, 1872,  
c. 152, s. 11, v.  
17, p. 94.

Surveyor general to appoint surveyors of mining claims, etc.

10 May, 1872,  
c. 152, s. 12, v.  
17, p. 95.

with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the Register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the Register and the Receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

Verification of affidavits, etc.

10 May, 1872,  
c. 152, s. 13, v.  
17, p. 95.

Sec. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the Register and Receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the Register of the land office as published nearest to the location of such land; and the Register shall require proof that such notice has been given.

Where veins intersect, etc.

10 May, 1872,  
c. 152, s. 14, v.  
17, p. 96.

Sec. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for nonmineral lands, etc.

10 May, 1872,  
c. 152, s. 15, v.  
17, p. 96.

Sec. 2337. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for



such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

Sec. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

What conditions of sale may be made by local legislature.

26 July, 1866,  
c. 262, s. 5, v.  
14, p. 252.

Sec. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Vested rights to use of water for mining, etc.; right of way for canals.

26 July, 1866,  
c. 262, s. 9, v.  
14, p. 253.

Sec. 2340. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Patents, preemptions, and homesteads subject to vested and accrued water rights.

9 July, 1870,  
c. 235, s. 17, v.  
16, p. 218.

Sec. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of preemption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this Title, relating to "Homesteads."

Mineral lands in which no valuable mines are discovered open to homesteads.

26 July, 1866,  
c. 262, s. 10, v.  
14, p. 253.

Mineral lands,  
how set apart as  
agricultural  
lands.

26 July, 1866,  
c. 262, s. 11, v.  
14, p. 253.

Additional land  
districts and offi-  
cers, power of  
the President to  
provide.

26 July, 1866,  
c. 262, s. 7, v.  
14, p. 252.

Provisions of  
this chapter not  
to affect certain  
rights.

10 May, 1872,  
c. 152, s. 16, v.  
17, p. 96.

9 July, 1870,  
c. 235, s. 17, v.  
16, p. 218.

Mineral lands  
in certain States  
excepted.

18 Feb., 1873,  
c. 159, v. 17, p.  
465.

Grant of lands  
to States or cor-  
porations not to  
include mineral  
lands.

30 Jan., 1865,  
Res. No. 10, v.  
13, p. 567.

Sec. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Sec. 2343. The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Sec. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the Act entitled "An Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

Sec. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of preemption as other public lands.

Sec. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the Act or Acts making the grant.



**ACTS OF CONGRESS PASSED SUBSEQUENT TO THE  
REVISED STATUTES.**

An Act to amend the Act entitled "An Act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the fifth section of the Act entitled "An Act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said Act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said Act shall be extended to the first day of January, eighteen hundred and seventy-five.

Claim located prior to May 10, 1872, first annual expenditure extended to Jan. 1, 1875.

Act of Congress approved June 6, 1874 (18 Stat. L., 61).

An Act to amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said Act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said Act.

Money expended in a tunnel considered as expended on the lode.

Act of Congress approved Feb. 11, 1875 (18 Stat. L., 315).

An Act to exclude the States of Missouri and Kansas from the provisions of the Act of Congress entitled "An Act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two.

Be it enacted from the Senate and House of Representatives of the United States of America in Congress assembled, That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the Act entitled "An Act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and all lands in said States shall be subject to disposal as agricultural lands.

Missouri and Kansas excluded from the operation of the mineral laws.

Act of Congress approved May 5, 1876 (19 Stat. L., 52).

An Act authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

Citizens of Colorado, Nevada, and the Territories authorized to fell and remove timber on the public domain for mining and domestic purposes.

Act of Congress approved June 3, 1878 (20 Stat. L., 88).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: Provided, The provisions of this Act shall not extend to railroad corporations.

Sec. 2. That it shall be the duty of the Register and the Receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this Act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such Register and Receiver in making up their next quarterly accounts.

Sec. 3. Any person or persons who shall violate the provisions of this Act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

An Act to amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States concerning mineral lands.

Application for patent may be made by authorized agent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "Provided, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or



its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: And provided, That this section shall apply to all applications now pending for patents to mineral lands."

Sec. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "Provided, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

On unpatented claims period commences on Jan. 1 succeeding date of location.

Act of Congress approved Jan. 22, 1880 (21 Stat. L., 61).

An Act to amend section twenty-three hundred and twenty-six of the Revised Statutes relating to suits at law affecting the title to mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

In action brought title not established in either party.

Act of Congress approved Mar. 3, 1881 (21 Stat. L., 505).

An Act to amend section twenty-three hundred and twenty-six of the Revised Statutes in regard to mineral lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

Adverse claim may be verified by agent.

Sec. 1, act of Congress approved April 26, 1882 (22 Stat. L., 49).

Sec. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any State or Territory.

Affidavit of citizenship; before whom made.

Sec. 2, act of Congress approved April 26, 1882 (22 Stat. L., 49).

(See Appendix, p. —.)

An Act to exclude the public lands in Alabama from the operation of the laws relating to mineral lands.

Alabama ex-  
cepted from the  
operation of these  
mineral laws.

Act of Con-  
gress approved  
Mar. 3, 1883 (22  
Stat. L., 487).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the State of Alabama all public lands, whether mineral or otherwise, shall be subject to disposal only as agricultural lands: Provided, however, That all lands which have heretofore been reported to the General Land Office as containing coal and iron shall first be offered at public sale: And provided further, That any bona fide entry under the provisions of the homestead law of lands within said State heretofore made may be patented without reference to an Act approved May tenth, eighteen hundred and seventy-two, entitled "An Act to promote the development of the mining resources of the United States," in cases where the persons making application for such patents have in all other respects complied with the homestead law relating thereto.

An Act providing for a civil government for Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Mining laws  
extended to the  
district of  
Alaska.

Act of Con-  
gress approved  
May 17, 1884  
(23 Stat. L., 24).

Sec. 8. That the said district of Alaska is hereby created a land district, and a United States land office for said district is hereby located at Sitka. The commissioner provided for by this Act to reside at Sitka shall be ex officio register of said land office, and clerk provided for by this Act shall be ex officio receiver of public moneys, and the marshal provided for by this Act shall be ex officio surveyor-general of said district and the laws of the United States relating to mining claims, and the rights incident thereto shall, from and after the passage of this Act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: Provided, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: And provided further, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: And provided also, That the land not exceeding six hundred and forty acres at any station now occupied as missionary



stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this Act shall be construed to put in force in said district the general land laws of the United States.

An Act making appropriations for sundry civil expenses of the Government, for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

No person who shall after the passage of this Act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this Act: Provided, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this Act west of the one hundredth meridian it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States. \* \* \*

Right of entry under all the land laws restricted to 320 acres. (Repealed, see act March 3, 1891, sec. 17).

Reservation in patents for right of way for ditches and canals constructed.

Act of Congress approved Aug. 30, 1890 (26 Stat. L., 371).

An Act to repeal the timber-culture laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Sec. 16. That townsite entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnamon, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, That no entry shall be made by

Town sites on mineral lands authorized.

Lands entered under the mineral laws not included in restrictions to 320 acres.

Act of Congress approved March 3, 1891 (26 Stat. L., 1095).

such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

Sec. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes, and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs, and that the provisions of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this Act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not include lands entered or sought to be entered under mineral land laws.

An Act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

27 Stat., 348. (See page 915.)

An Act to amend section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

Requirement of  
proof of expenditure  
for the year  
1893 suspended  
except as to  
South Dakota.

Act of Congress  
approved  
Nov. 3, 1893 (28  
Stat. L. 6).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, be suspended for the year eighteen hundred and ninety-three, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for non-performance of the annual assessment for the year eighteen hundred and ninety-three: Provided, That the claimant or claimants of any mining location, in order to secure the benefits of this act shall cause to



be recorded in the office where the location notice or certificate is filed on or before December thirty-first, eighteen hundred and ninety-three, a notice that he or they, in good faith intend to hold and work said claim: Provided, however, That the provisions of this Act shall not apply to the State of South Dakota.

This Act shall take effect from and after its passage.

An Act to amend section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, be suspended for the year eighteen hundred and ninety-four, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for non-performance of the annual assessment for the year eighteen hundred and ninety-four: Provided, That the claimant or claimants of any mining location, in order to secure the benefits of this Act, shall cause to be recorded in the office where the location notice or certificate is filed on or before December thirty-first, eighteen hundred and ninety-four, a notice that he or they in good faith intend to hold and work said claim: Provided, however, That the provisions of this Act shall not apply to the State of South Dakota.

Requirement of proof of expenditure for the year 1894 suspended except as to South Dakota.

Act of Congress	July 18, 1894	of Congress approved
(28 Stat. 114).		L.

Sec. 2. This Act shall take effect from and after its passage.

An Act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, and for other purposes.

#### [WICHITA LANDS, OKLAHOMA.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

The said Wichita and affiliated bands of Indians in the Indian Territory hereby cede, convey, transfer, relinquish, forever and absolutely, without any reservation whatever, all their claim, title and interest of every kind and character in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:

Lands ceded.

Act of Mar. 2, 1895	(28 Stat. L., 876, 894, 899).
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Commencing at a point in the middle of the main channel of the Washita River, where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of ninety-eight degrees forty minutes west longitude, thence on said line of ninety-eight degrees forty minutes due north to the middle of the channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian, thence due south to the place of beginning.

Mineral laws.

That the laws relating to the mineral lands of the United States are hereby extended over the lands ceded by the foregoing agreement.

An Act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes.

[FORT BELKNAP INDIAN RESERVATION, MONTANA.]

Sec. 8.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be open to occupation, location, and purchase, under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: Provided, That said lands shall be sold at ten dollars per acre: And provided further, That the terms of this section shall not be construed to authorize the occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey.

*Proviso.*  
Price.  
No occupancy  
prior to opening.

[BLACKFEET INDIAN RESERVATION, MONTANA.]

Sec. 9.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: Provided, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey:

*Proviso.*  
No occupancy  
prior to opening.



## [SAN CARLOS INDIAN RESERVATION, ARIZONA.]

## Sec. 10.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: Provided, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey: Provided, however, That any person who in good faith prior to the passage of this Act had discovered and opened, or located, a mine of coal or other mineral, shall have a preference right of purchase for ninety days from and after the official filing in the local land office of the approved plat of survey provided for by this section.

*Providos.*  
No occupancy  
prior to opening.

Preference to  
discoverers of  
coal, etc.

Act of Con-  
gress approved  
June 10, 1896  
(29 Stat. L.,  
353, 357, 360).

An Act to authorize the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims: Provided, That lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this Act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof.

Entry and pat-  
enting of lands  
containing petro-  
leum and other  
mineral oils under  
the placer-  
mining laws.

Act of Con-  
gress approved  
Feb. 11, 1897  
(29 Stat. L.,  
526).

An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes.

All public lands heretofore designated and reserved by the President of the United States under the provisions of the Act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said Act, shall be as far as practicable controlled and administered in accordance with the following provisions:

Act of Con-  
gress approved  
June 4, 1897 (30  
Stat. L., 34, 35,  
36).

Forest reservations, when to be established.

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the Act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

\* \* \* \* \*

Use of timber, etc., by settlers, etc.

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Egress and ingress of settlers within reservations, etc.

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: Provided, That such persons comply with the rules and regulations covering such forest reservations.

\* \* \* \* \*

Restoration of mineral or agricultural lands to the public domain.

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States



and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provision herein contained.

An Act extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes.

\* \* \* \* \*

Sec. 13. That native-born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States, or persons who have declared their intention to become such, may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect.

Mining rights in Alaska to native-born citizens of the Dominion of Canada

Act of Congress approved May 14, 1898 (30 Stat. L., 415).

An Act making further provisions for a civil government for Alaska, and for other purposes.

\* \* \* \* \*

Sec. 15. The respective Recorders shall, upon the payment of the fees for the same prescribed by the Attorney-General, record separately, in large and well-bound separate books, in fair hand:

What recorded.

Act of Congress approved June 8, 1900 (31 Stat. L., 321, 326, 330).

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property;

\* \* \* \* \*

Ninth. Affidavits of annual work done on mining claims;

Tenth. Notices of mining location and declaratory statements;

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: Provided, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject-matter affected by the instrument is situated, and where the property or subject-matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject-matter is situated.

Proviso.  
Mining claims.

Where instruments recorded.

\* \* \* \* \*

*Proviso.*  
Miners' regu-  
lations for re-  
cording, etc.—  
Recorder.  
Records at  
Dyea, etc., legal-  
ized.

\* \* \* Provided, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this Act or the general laws of the United States; and nothing in this Act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own Mining Recorder to act as such until a Recorder therefor is appointed by the court: Provided further, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the Recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the Recorder for the recording district including such mining district within six months from the passage of this Act.

Mining laws.

*Provisos.*  
Gold, etc. Ex-  
plorations on  
Bering Sea.

Sec. 26. The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the district of Alaska: Provided, That subject only to such general limitations as may be necessary to exempt navigation from artificial obstructions all land and shoal water between low and mean high tide on the shores, bays, and inlets of Bering Sea, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: Provided further, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permits shall be granted by the Secretary of War authorizing any person or persons, corporation, or company to excavate or mine under any of said waters below low tide, and if such exclusive permit has been granted it is hereby revoked and declared null and void; but citizens of the United States or persons who have legally declared their intention to become such shall have the right to dredge and mine for gold or other precious metals in said waters, below low tide, subject to such general rules and regulations as the Secretary of War may prescribe for the preservation of order and the protection of the interests of commerce; such rules and regulations shall not, however, deprive miners on the

—miners' regula-  
tions.

—not to conflict  
with Federal  
laws.

Exclusive per-  
mits to mine  
void, etc.



beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation; and the reservation of a roadway sixty feet wide, under the tenth section of the Act of May fourteenth, eighteen hundred and ninety-eight, entitled "An Act extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes," shall not apply to mineral lands or town sites.

Provisions re-  
serving roadway,  
etc., not to ap-  
ply. Vol. 30, p.  
413.

An Act to ratify an agreement with the Indians of the Fort Hall Reservation in Idaho, and making appropriations to carry the same into effect. Act of Congress approved June 6, 1900 (31 Stat. L., 680.)

[DISPOSITION OF COMANCHE, KIOWA, AND APACHE LANDS.]

That should any of said lands allotted to said Indians, or opened to settlement under this Act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this Act, and the mineral laws of the United States are hereby extended over said lands.

An Act extending the mining laws to saline lands.

An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nineteen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain: Provided, That persons entering any of said land under the homestead law shall pay therefor at the rate of one dollar and twenty-five cents per acre: And provided further, That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the Secretary of the Interior to negotiate with said Indians for a

Uintah and  
White River  
Utes.

Allotment of  
irrigable land.

Unallotted  
lands restored to  
public domain.

Proviso.  
Homestead  
entries.

Mineral  
leases.

mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to thirty days before said lands are restored to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential right to locate under the mining laws not to exceed six hundred and forty acres of contiguous mineral land, except the Raven Mining Company, which may in lieu of its lease locate one hundred mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians.

\* \* \* \* \*

An Act defining what shall constitute and providing for assessments on oil mining claims.

Assessment required for oil mining claims.

Act of Congress approved Feb. 12, 1903 (32 Stat. L., 825).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: Provided, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims.

An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

Uncompahgre Indian Reservation.

Mining claims located on prior to Jan. 1, 1891, valid.

That in the lands within the former Uncompahgre Indian Reservation, in the State of Utah, containing gilsonite, asphaltum, elaterite, or other like substances, which were reserved from location and entry by provision in the Act of Congress entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June seventh, eighteen hundred and ninety-seven, all discoveries and locations of any such mineral lands by qualified persons prior to January first, eighteen hun-



dred and ninety-one, not previously discovered and located, who recorded notices of such discoveries and locations prior to January first, eighteen hundred and ninety-one, either in the State of Colorado, or in the office of the County Recorder of Uintah County, Utah, shall have all the force and effect accorded by law to locations of mining claims upon the public domain. All such locations may hereafter be perfected, and patents shall be issued therefor upon compliance with the requirements of the mineral-land laws, provided that the owners of such locations shall relocate their respective claims and record the same in the office of the County Recorder of Uintah County, Utah, within ninety days after the passage of this Act. All locations of any such mineral lands made and recorded on or subsequent to January first, eighteen hundred and ninety-one, are hereby declared to be null and void; and the remainder of the lands heretofore reserved as aforesaid because of the mineral substances contained in them, in so far as the same may be within even-numbered sections, shall be sold and disposed of in tracts not exceeding forty acres, or a quarter of a quarter of a section, in such manner and upon such terms and with such restrictions as may be prescribed in a proclamation of the President of the United States issued for that purpose not less than one hundred and twenty days after the passage of this Act, and not less than ninety days before the time of sale or disposal, and the balance of said lands and also all the mineral therein are hereby specifically reserved for future action of Congress.

Patents to issue on relocations, etc., of claims.

Claims located after Jan. 1, 1891, invalid. Sale of remainder of mineral lands.

#### Restrictions.

Act of Congress approved Mar. 3, 1903 (32 Stat. L., 998).

\* \* \* \* \*  
 An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment.

\* \* \* \* \*  
 Sec. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of forty acres each, all of the remaining lands embraced within said reservation. In making such classification and appraisal said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, timber lands, the same to be lands more valuable for their timber than for any other purpose; fourth, mineral lands; and fifth, grazing lands.

Classification, etc., of lands.

\* \* \* \* \*  
 Sec. 8. That when said commission shall have completed the classification and appraisal of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the provisions of the homestead, min-

Disposal of lands.

Timber and  
school lands ex-  
cepted.

eral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections sixteen and thirty-six of each township, which are hereby granted to the State of Montana for school purposes. \* \* \*

Mineral land  
entries.

Sec. 10. That only mineral entry may be made on such of said lands as said commission shall designate and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by said commission as mineral lands or otherwise, such classification by said commission being only prima facie evidence of the mineral or non-mineral character of the same: Provided, That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian.

Proviso.  
Exceptions.

Act of Congress  
approved April  
23, 1904 (33  
Stat. L., 302).

An Act to ratify and amend an agreement with the Indians of the Crow Reservation, in Montana, and making appropriations to carry the same into effect.

Town-site and  
mineral lands.

Act of Congress  
approved April  
27, 1904 (33  
Stat. L., 352).

Sec. 5. \* \* \* And provided further, That the price of said lands shall be four dollars per acre, when entered under the homestead laws. \* \* \* Lands entered under the town-site and mineral land laws shall be paid for in amount and manner as provided by said laws, but in no event at a less price than that fixed herein for such lands, if entered under the homestead laws. \* \* \*

An Act to authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation, in the State of Washington.

Appraisal of  
unallotted lands,  
etc.

Sec. 3. That the residue of the lands of said reservation—that is, the lands not allotted and not reserved—shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the mineral lands, which need not be appraised, and the timber on the lands classified as timber lands shall be appraised separately from the land. The basis for the appraisal of the timber shall be the amount of standing merchantable timber thereon, which shall be ascertained and reported.

Mineral lands.  
Lands not  
classified as min-  
eral lands.  
Provisos.

The lands classified as mineral lands shall be subject to location and disposal under the mineral-land laws of the United States: Provided, That lands not classified as mineral may also be located and entered as mineral lands, subject to approval by the Secretary of the Interior and conditioned upon the payment, within one year from the date when located, of the appraised value of the lands per acre fixed prior to the date of such location, but at not less than the price fixed by



existing law for mineral lands: Provided further, That no such mineral locations shall be permitted on any lands allotted to Indians in severalty or reserved for any purpose as herein authorized.

Restriction.

Act of Congress approved Dec. 21, 1904 (33 Stat. L., 595).

An Act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the State of Wyoming and to make appropriations for carrying the same into effect.

\* \* \* \* \*

Sec. 2. That the lands ceded to the United States under the said agreement shall be disposed of under the provisions of the homestead, town-site, coal, and mineral land laws of the United States and shall be opened to settlement and entry by proclamation of the President.

Opening of lands to entry.

Proclamation.

\* \* \* \* \*

\* \* \* Lands entered under the town-site, coal, and mineral land laws shall be paid for in amount and manner as provided by said laws. Notice of location of all mineral entries shall be filed in the local land office of the district in which the lands covered by the location are situated, and unless entry and payment shall be made within three years from the date of location all rights thereunder shall cease; \* \* \* that all lands, except mineral and coal lands, herein ceded remaining undisposed of at the expiration of five years from the opening of said lands to entry shall be sold to the highest bidder for cash at not less than one dollar per acre under rules and regulations to be prescribed by the Secretary of the Interior.

Town-site, coal, and mineral entries.

Act of Congress approved Mar. 3, 1905 (33 Stat. L., 1016).

An Act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes.

\* \* \* \* \*

Sec. 3. That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said diminished Colville Indian Reservation shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under the general mining laws of the United States.

Mineral lands.

Act of Congress approved March 22, 1906.

An Act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

## [COEUR D'ALENE INDIAN LANDS.]

**Mineral lands.**

Act of Congress approved June 21, 1906 (34 Stat. L., 336).  
Coal and oil deposits reserved.

\* \* \* Provided further, That the general mining laws of the United States shall extend after the approval of this Act to any of said lands, and mineral entry may be made on any of said lands, but no such mineral selection shall be permitted upon any lands allotted in severalty to the Indians: Provided further, That all the coal or oil deposits in or under the lands on the said reservation shall be and remain the property of the United States, and no patent that may be issued under the provisions of this or any other Act of Congress shall convey any title thereto. \* \* \*

Act of Congress approved March 2, 1907 (35 Stat. L., 1243).  
Alaska.  
Annual improvements, etc., required on mining claims.

An Act to amend the laws governing labor or improvements upon mining claims in Alaska.

**Filing affidavits.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during each year and until patent has been issued therefor, at least one hundred dollars' worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in the district of Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said Recorder of the district in which the claims shall be situate an affidavit showing the performance of labor or making of improvements to the amount of one hundred dollars as aforesaid and specifying the character and extent of such work. Such affidavit shall set forth the following: First, the name or number of the mining claims and where situated; second, the number of days' work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvement, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by this Act the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this Act, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made. The affidavits required hereby may be made before any officer authorized to administer oaths, and the provisions of sections fifty-three hundred and ninety-two and fifty-three hundred

**Contents.**

Prima facie evidence of performance of work, etc.

**Forfeiture.**

Officer before whom affidavits may be made.  
R. S. secs. 5392, 5393, p. 1045.



and ninety-three of the Revised Statutes are hereby extended to such affidavits. Said affidavits shall be filed not later than ninety days after the close of the year in which such work is performed.

Time of filing.  
Fee.

Sec. 2. That the Recorders for the several divisions or districts of Alaska shall collect the sum of one dollar and fifty cents as a fee for the filing, recording, and indexing said annual proofs of work and improvements for each claim so recorded.

An Act authorizing a resurvey of certain townships in the State of Wyoming, and for other purposes.

[BITTER ROOT VALLEY, MONTANA.]

Sec. 11. That all the provisions of the mining laws of the United States are hereby extended and made applicable to the undisposed-of lands in the Bitter Root Valley, State of Montana, above the mouth of the Lo Lo Fork of the Bitter Root River, designated in the Act of June fifth, eighteen hundred and seventy-two: Provided, That all mining locations and entries heretofore made or attempted to be made upon said lands shall be determined by the Department of the Interior as if said lands had been subject to mineral location and entry at the time such locations and entries were made or attempted to be made: And provided further. That this Act shall not be applicable to lands withdrawn for administration sites for use of the Forest Service.

Mining laws  
extended to  
lands.  
Act of Congress  
approved May 29,  
1908 (35 Stat.  
L., 467).

An Act for relief of applicants for mineral surveys.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of the moneys heretofore or hereafter covered into the Treasury from deposits made by individuals to cover cost of work performed and to be performed in the offices of the United States surveyors-general in connection with the survey of mineral lands, any excess in the amount deposited over and above the actual cost of the work performed, including all expenses incident thereto for which the deposits were severally made or the whole of any unused deposit; and such sums, as the several cases may be, shall be deemed to be annually and permanently appropriated for that purpose. Such repayments shall be made to the person or persons who made the several deposits, or to his or their legal representatives, after the completion or abandonment of the work for which the deposits were made, and upon an account certified by the surveyor-general of the district in which the mineral land surveyed, or sought to be surveyed is situated and approved by the Commissioner of the General Land Office.

Repayment of  
deposits for min-  
eral surveys.  
Act of Congress  
approved Feb. 24,  
1909 (36 Stat.  
L., —). Pub.  
No. 257.

An Act extending the time for final entry of mineral claims within the Shoshone or Wind River Reservation in Wyoming.

Time extended  
for making en-  
try.

Act of Congress  
approved Feb.  
25, 1909 (36  
Stat. L. —).  
Pub. No. 266.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of chapter fourteen hundred and fifty-two of the Statutes of the Fifty-eighth Congress (United States Statutes at Large, volume thirty-three, part one), being "An Act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation, in the State of Wyoming, and to make appropriations to carry the same into effect," be, and the same is hereby, amended so that all claimants and locators of mineral lands within the ceded portion of said reservation shall have five years from the date of location within which to make entry and payment instead of three years, as now provided by the said Act.

## REGULATIONS.

### NATURE AND EXTENT OF MINING CLAIMS.

1. Mining claims are of two distinct classes: Lode claims and placers.

#### Lode Claims.

2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after the 10th May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of fifteen hundred linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of fifteen hundred feet, but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case exceed



three hundred feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond three hundred feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. Locators can not exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

9. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible

of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

10. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

11. The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

12. In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that ten dollars shall be expended annually in labor or improvements for each one hundred feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually. Under the provisions of the Act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several coowners to contribute his proportion of the required expenditures, the coowners, who have performed the labor or made the improvements, as required, may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent coowner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his coowners who have made the expenditures or improvements aforesaid. Where a claimant alleges ownership of a forfeited



interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent coowner failed to contribute his proper proportion within the period fixed by the statute.

#### **Tunnels.**

16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the Mining Recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded,

and, with the said sworn statement attached, kept on the Recorder's files for future reference.

#### Placer Claims.

19. But one discovery of mineral is required to support a placer location, whether it be of twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

20. The Act of August 4, 1892, extends the mineral-land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands. Registers and Receivers should make a reference to said Act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any State are not subject to entry under said Act.

21. The Act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said Act are to be considered as though made thereunder.

22. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

23. (Omitted.)

24. A ten-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE.  $\frac{1}{4}$  of the NE.  $\frac{1}{4}$  of the NE.  $\frac{1}{4}$ " of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

25. The proof of improvements must show their value to be not less than five hundred dollars and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two or more disinterested witnesses. The annual expenditure to the amount of \$100, required by section 2324, Revised Statutes, must be made upon placer as well as lode locations.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive



declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim, made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than twenty acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein; that is, a location by two persons can not exceed forty acres, and one by three persons can not exceed sixty acres.

30. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

Conformity to the public land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

Where a placer location by one or two persons can be entirely included within a square forty-acre tract, by three or four persons within two square forty-acre tracts placed end to end, by five or six persons within three square forty-acre tracts and by seven or eight persons within four square forty-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer 37 L. D., 250.)

#### **Regulations Under Saline Act.**

31. Under the Act approved January 31, 1901, extending the mining laws to saline lands, the provisions of the law relating to

placer-mining claims are extended to all States and Territories and the district of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this Act a person holding as assignee may make entry in his own name: Provided, He has not held under this Act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this Act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this Act, shall embrace more than one single location.

By order dated June 4, 1912, paragraph 33 of the Mining Regulations, approved March 29, 1909, was amended by the Department to read as follows:

In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the application for patent must contain or be accompanied by a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this Act. The application for patent should also be accompanied by a showing under oath, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

## **PROCEDURE TO OBTAIN PATENT TO MINERAL LANDS.**

### **Lode Claims.**

34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the Surveyor-General of the State or Territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field notes in each case will be prepared by the Surveyor-General; one plat and the original field notes to be retained in the office of the Surveyor-General; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper Register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the Surveyor-General to the Register of the proper land district, to be retained on his files for future reference. As there is no resident Surveyor-General for the State of Arkansas, applications for the survey of mineral claims in said State should be made to the Commissioner of this office, who, under the law, is ex officio the U. S. Surveyor-General. (See instructions of July 29, 1911, p. 60.)

35. The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district



require the notice of location to be recorded), and when the original location is made by survey of a United States mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.

36. The Surveyors-General should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than two miles in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the mineral surveyor at the time of his making the particular survey and be made a part thereof.

37. (a) Promptly upon the approval of a mineral survey the Surveyor-General will advise both this office and the appropriate local land office, by letter (Form 4-286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the locus of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but hereafter no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by this office.

(b) Upon application to make agricultural entry of the residue of any original lot or legal subdivision of forty acres, reduced by mining claims for which patent applications have been filed and which residue has been already reallotted in accordance therewith, the local officers will accept and approve the application as usual, if found to be regular. When such an application is filed for any such original lot or subdivision, reduced in available area by duly asserted mining claims but not yet reallotted accordingly, the local officers will promptly advise this office thereof; and will also report and identify any pending application for mineral patent affecting such subdivision which the agricultural applicant does not desire to contest. The Surveyor-General will thereupon be advised by this office of such mining claims, or portions thereof, as are proper to be segregated, and directed to at once prepare, upon the usual drawing-

paper township blank, diagram of amended township survey of such original lot or legal forty-acre subdivision so made fractional by such mineral segregation, designating the agricultural portion of appropriate lot number, beginning with No. 1 in each section and giving the area of each lot, and will forthwith transmit one approved copy to the local land office and one to this office. In the meantime the local officers will accept the agricultural application (if no other objection appears), suspend it with reservation of all rights of the applicant if continuously asserted by him, and upon receipt of amended township diagram will approve the application (if then otherwise satisfactory) as of the date of filing, corrected to describe the tract as designated in the amended survey.

(c) The Register and Receiver will allow no agricultural claim for any portion of an original lot or legal forty-acre subdivision, where the reduced area is made to appear by reason of approved surveys of mining claims and for which applications for patent have not been filed, until there is submitted by such agricultural applicant a satisfactory showing that such surveyed claims are in fact mineral in character; and applications to have lands asserted to be mineral, or mining locations, segregated by survey, with the view to agricultural appropriation of the remainder, will be made to the Register and Receiver for submission to the Commissioner of the General Land Office, for his consideration and direction, and must be supported by the affidavit of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required in any case, that the lands sought to be segregated as mineral are in fact mineral in character; otherwise, in the absence of satisfactory showing in any such case, such original lot or legal subdivision will be subject to agricultural appropriation only. When any such showing shall be found to be satisfactory and the necessary survey is had, amended township diagram will be required and made as prescribed in the preceding section.

38. The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres.
Total area of claim.....	10.50
Area in conflict with survey No. 302.....	1.56
Area in conflict with survey No. 948.....	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed....	1.48



It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

39. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey. Too much care can not be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

40. After posting the said plat and notice upon the premises, the claimant will file with the proper Register and Receiver a copy of such plat and the field notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the notice so posted to be attached to and form a part of said affidavit.

41. Accompanying the field notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession and the basis of his claim to a patent. The vein or lode must be fully described, the description to include a statement as to the kind and character of mineral, the extent thereof, whether ore has been extracted and of what amount and value and such other facts as will support the applicant's allegation that the claim contains a valuable mineral deposit.

Circular No. 68, January 9, 1912, amended paragraph No. 42 to read as follows:

42. This sworn statement must be supported by a copy of each location notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim certified by the legal custodian of the records of transfers, or by a duly authorized abstractor of titles. The certificate must state that no conveyances affecting, or purporting to affect, the title to the claim or claims appear of record other than those set forth.

Outside of the District of Alaska the application for patent will be received and filed if the abstract is brought to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must, as soon as practicable thereafter, file a supplemental abstract brought down so as to include the date of the filing of the application. Publication will not be ordered until the showing as to title is thus completed and the local land officers are satisfied that full title was in the applicant on the day of the filing of the application.

In the District of Alaska the application for patent will be received and filed and the order for publication issued if the abstract showing full title

in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the sixty-day period of publication.

No certificate from an abstracter, or abstract company, will be accepted until approval by the Commissioner of the General Land Office of a favorable report of the chief of field division, or United States district attorney whose division or district embraces the lands in question, as to the reliability and responsibility of such abstracter.

43. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

Paragraph 44 was amended by circular No. 49, Aug 19, 1911, to read as follows:

"44. Before approving for publication any notice of an application for mineral patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any land embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, they should formally reject the same, giving the reasons therefor, and allow the applicant thirty days for appeal to this office under the Rules of Practice."

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the Register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

47. The Register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

48. The claimant at the time of filing the application for patent, or at any time within the sixty days of publication, is required to file with the Register a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces



several contiguous locations held in common, that an amount equal to five hundred dollars for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof: Provided, That as to all applications for patents made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of five hundred dollars upon the group will be sufficient, and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

49. The surveyor-general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who makes the actual survey and examination upon the premises, and such mineral surveyor should specify with particularity and full detail the character and extent of such improvements, but further or other evidence may be required in any case.

50. It will be convenient to have this certificate indorsed by the surveyor-general, both upon the plat and field notes of survey filed by the claimant as aforesaid.

51. After the sixty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

52. Upon the filing of this affidavit the Register will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of five dollars for each acre and five dollars for each fractional part of an acre, except as otherwise provided by law, the Receiver issuing the usual receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the Register and Receiver of the land office, after which the complete record will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

53. At any time prior to the issuance of patent protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest can not, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his

interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a coowner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes. (See *Turner v. Sawyer*, 150 U. S., 578-586.)

54. Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

55. The annual expenditure of one hundred dollars in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes, is solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

56. The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

57. The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

#### Placer Claims.

58. The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings described for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

59. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; the price of placer claims being fixed, however, at two dollars and fifty cents per acre or fractional part of an acre.

60. In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim



that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

While this data is required as a part of the mineral surveyor's report under paragraph 167, in case of placers taken by special survey, it is proper that the application for patent incorporate these facts under the oath of the claimant.

Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

As prescribed by paragraph 25, this statement as to the description and value of the improvements must be corroborated by the affidavits of two disinterested witnesses.

Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

Local land officers are instructed that if the proofs submitted in placer applications under this paragraph are not satisfactory as showing the land as a whole to be placer in character, or if the claims impinge upon or embrace water courses or bodies of water, and thus raise a doubt as to the bona fides of the location and application, or the character and extent of the deposit claimed thereunder, to call for further evidence, or if deemed necessary, request the specific attention of the Chief of Field Service thereto in con-

nection with the usual notification to him under the circular instructions of April 24, 1907, and suspend further action on the application until a report thereon is received from the field officer.

#### MILL SITES.

61. Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of mill sites, is embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such contiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

64. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

#### CITIZENSHIP.

66. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their char-



acter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

67. In case of an individual or an association of individuals who do not appear by their duly authorized agent, the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

68. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

69. The affidavit of the claimant as to his citizenship may be taken before the Register or Receiver, or any other officer authorized to administer oaths within the land districts; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any State or Territory.

70. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

71. No entry will be allowed until the Register has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

72. The mineral entries will be given the current serial numbers according to the provisions of the circular of June 10, 1908, whether the same are of lode or of placer claims or of mill sites.

73. In sending up the papers in a case the Register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued. The schedule of papers, form 4-252f, should accompany the returns with all mineral applications and entries allowed.

#### **POSSESSORY RIGHT.**

74. The provisions of section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

75. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be

required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

76. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant.

77. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

#### **ADVERSE CLAIMS.**

78. An adverse claim must be filed with the Register and Receiver of the land office where the application for patent is filed or with the Register and Receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated.

79. Where an agent or attorney in fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

80. The agent or attorney in fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

81. The adverse claim so filed must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as



a locator he must file a duly certified copy of the location from the office of the proper recorder.

82. In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: Provided, however, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions, it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor, and its correctness officially certified thereon by him.

83. Upon the foregoing being filed within the sixty days' period of publication, the Register, or in his absence the Receiver, will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

84. When an adverse claim is filed as aforesaid, the Register or Receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed, with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the Register a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes.

86. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

87. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

88. Where an adverse claim has been filed, but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the circuit court of the United States for the district in which the claim is situated, will be required.

## APPOINTMENT OF SURVEYORS FOR SURVEY OF MINING CLAIMS AND CHARGES.

89. Section 2334 provides for the appointment of surveys to survey mining claims, and authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications. Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

(1) Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as the medium of publication five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body type used for advertisements.

(2) For the publication of citations in contests or hearings involving the character of lands the charges shall not exceed eight dollars for five publications in weekly newspapers or ten dollars for publications in daily newspapers for thirty days.

90. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The statute provides that the claimant shall also be at liberty to employ any United States mineral surveyor to make the survey. Each surveyor appointed to survey mining claims before entering upon the duties of his office or appointment shall be required to enter into a bond of not less than \$5,000 for the faithful performance of his duties.

91. With regard to the platting of the claim and other office work in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

92. The surveyors-general will endeavor to appoint surveyors to survey mining claims so that one or more may be located in each mining district for the greater convenience of miners.

93. The usual oaths will be required of these surveyors and their assistants as to the correctness of each survey executed by them.

The duty of the surveyor ceases when he has executed the survey and returned the field notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim.



The surveyors-general and local land officers are expected to report any infringement of this regulation to this office.

94. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

#### **FEES OF REGISTERS AND RECEIVERS.**

95. The fees payable to the Register and Receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse judgment at the time of filing his adverse claim. (Sec. 2238, R. S., par 9.)

[Paragraphs 96, 97, and 98 are superseded by the general circular instructions of June 10, 1908.]

#### **HEARINGS TO DETERMINE CHARACTER OF LANDS.**

99. The Rules of Practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

100. Public land returned by the surveyor-general as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome by testimony taken in the manner hereinafter described.

101. Hearings to determine the character of lands:

(1) Lands returned as mineral by the surveyor-general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for sixty days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

[Paragraphs 102 to 104, inclusive, are superseded by appropriate instructions relative to nonmineral proofs in railroad, State, and forest lieu selections contained in separate circulars.]

105. At hearings to determine the character of lands the claim-

ants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit, which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

106. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

107. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

108. When the case comes before this office, such decision will be made as the law and the facts may justify. In cases where a survey is necessary to set apart the mineral from the agricultural land, the proper party, at his own expense, will be required to have the work done by a reliable and competent surveyor to be designated by the surveyor-general. Application therefor must be made to the Register and Receiver, accompanied by description of the land to be segregated and the evidence of service upon the opposite party of notice of his intention to have such segregation made. The Register and Receiver will forward the same to this office, when the necessary instructions for the survey will be given. The survey in such case, where the claims to be segregated are vein or lode claims, must be executed in such manner as will conform to the requirements in section 2320, Revised Statutes, as to length and width and parallel end lines.

109. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, United States com-



missioner, officer of a court of record, or before the Register or Receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

110. Upon the filing of the plat and field notes of such survey with the Register and Receiver, duly sworn to as aforesaid, they will transmit the same to the surveyor-general for his verification and approval, who, if he finds the work correctly performed, will furnish authenticated copies of such plat and description both to the proper local land office and to this office, made upon the usual drawing-paper township blank.

The copy of plat furnished the local office and this office must be a diagram verified by the surveyor-general, showing the claim or claims segregated, and designating the separate fractional agricultural tracts in each 40-acre legal subdivision by the proper lot number, beginning with No. 1 in each section, and giving the area in each lot, the same as provided in paragraph 37 in the survey of mining claims on surveyed lands.

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the General Land Office.

#### **DISTRICT OF ALASKA.**

112. Section 13, Act of May 14, 1898, according to native-born citizens of Canada "the same mining rights and privileges" in the district of Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not now and never has been operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases.

113. For the sections of the Act of June 6, 1900, making further provision for a civil government for Alaska, which provide for the establishment of recording districts and the recording of mining locations; for the making of rules and regulations by the miners and for the legalization of mining records; for the extension of the mining laws to the district of Alaska, and for the exploration and mining of tide lands and lands below low tide; and relating to the rights of Indians and persons conducting schools or missions, see page 21 of this circular.

#### **MINERAL LANDS WITHIN NATIONAL FORESTS.**

114. The Act of June 4, 1897, provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the

forest reserves subject to location and entry under the general mining laws in the usual manner.

The Act also provides that "The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located."

#### **Transfer of National Forests.**

Act of February 1, 1905 (33 Stat., 628.).

The Secretary of the Department of Agriculture shall, from and after the passage of this Act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the Act entitled "An Act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, and Acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

(For further information see Use Book—Forest Service.)

#### **SURVEYS OF MINING CLAIMS.**

##### **General Provisions.**

115. Under section 2334, Revised Statutes, the U. S. surveyor-general "may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to surveying mining claims."

116. Persons desiring such appointment should therefore file their applications with the surveyor-general for the district wherein appointment is asked, who will furnish all information necessary.

117. All appointments of mineral surveyors must be submitted to the Commissioner of the General Land office for approval.

118. The surveyors-general have authority to suspend or revoke the commissions of mineral surveyors for cause. Before final action, however, the matter should be submitted to the Commissioner of the General Land Office for approval.

119. Such surveyors will be allowed the right of appeal from the action of the surveyor-general in the usual manner. Such appeal should be filed with the surveyor-general, who will at once transmit the same, with a full report, to the General Land Office.

120. Neither the surveyor-general nor the Commissioner of the General Land Office has jurisdiction to settle differences, relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.



121. The surveyors-general should appoint as many competent mineral surveyors as apply for appointment, in order that claimants may have a choice of surveyors, and be enabled to have their work done on the most advantageous terms.

122. The schedule of charges for office work should be as low as is possible. No additional charges should be made for orders for amended surveys, unless the necessity therefor is clearly the fault of the claimant, or considerable additional office work results therefrom.

123. [Omitted.]

124. Mineral surveyors will address all official communications to the surveyor-general. They will, when a mining claim is the subject of correspondence, give the name and survey number. In replying to letters they will give the subject-matter and date of the letter. They will promptly notify the surveyor-general of any change in postoffice address.

125. Mineral surveyors should keep a complete record of each survey made by them and the facts coming to their knowledge at the time, as well as copies of all their field notes, reports and official correspondence, in order that such evidence may be readily produced when called for at any future time. Field notes and other reports must be written in a clear and legible hand or typewritten, in non-copying ink, and upon the proper blanks furnished gratuitously by the surveyor-general's office upon application therefor. No interlineations or erasures will be allowed.

126. No return by a mineral surveyor will be recognized as official unless it is over his signature as a United States mineral surveyor, and made in pursuance of a special order from the surveyor-general's office. After he has received an order for survey he is required to make the survey and return correct field notes thereof to the surveyor-general's office without delay.

127. The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

128. A mineral surveyor is precluded from acting, either directly or indirectly, as attorney in mineral claims. His duty in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this rule, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper surveyor-general a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in

his official capacity as surveyor. He will not employ chainmen interested therein in any manner.

### Method of Survey.

129. The survey made and returned must, in every case, be an actual survey on the ground in full detail, made by the mineral surveyor in person after the receipt of the order, and without reference to any knowledge he may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. This precludes him from calculating the connections to corners of the public survey and location monuments, or any other lines of his survey through prior surveys made by others and substituting the same for connections or lines of the survey returned by him. The term survey in this paragraph applies not only to the usual field work, but also to the examinations required for the preparation of affidavits of five hundred dollars expenditure, descriptive reports on placer claims, and all other reports.

130. The survey of a mining claim may consist of several contiguous locations, but such survey must, in conformity with statutory requirements, distinguish the several locations, and exhibit the boundaries of each. The survey will be given but one number.

131. The survey must be made in strict conformity with, or be embraced within, the lines of the location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of survey to the corresponding corner of the location, and the location corner must be fully described, so that it can be identified. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such a manner as to contrast and show their relation to the lines of survey.

132. In view of the principle that courses and distances must give way when in conflict with fixed objects and monuments, the surveyor will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field notes.

133. No mining claim located subsequent to May 10, 1872, should exceed the statutory limit in width on each side of the center of vein or 1,500 feet in length, and all surveys must close within 50-100 feet in 1,000 feet, and the error must not be such as to make the location exceed the statutory limit, and in absence of other proof the discovery point is held to be the center of the vein on the surface. The course and length of the vein should be marked upon the plat.

134. All mineral surveys must be made with a transit, with or without solar attachment, by which the meridian can be determined independently of the magnetic needle, and all courses must be referred to the true meridian. The variation should be noted at each corner of the survey. The true course of at least one line of each survey must be ascertained by astronomical observations made at the time of the survey; the data for determining the same and details as to how these data were arrived at must be given. Or,



in lieu of the foregoing, the survey must be connected with some line the true course of which has been previously established beyond question, and in a similar manner, and, when such lines exist, it is desirable in all cases that they should be used as a proof of the accuracy of subsequent work.

135. Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey or with a United States location monument, if the claim lies within two miles of such corner or monument. If both are within the required distance, the connection must be with the corner of the public survey.

136. Surveys and connections of mineral claims may be made in suspended townships in the same manner as though the claims were upon unsurveyed land, except as hereinafter specified, by connecting them with independent mineral monuments. At the same time, the position of any public-land corner which may be found in the neighborhood of the claim should be noted, so that, in case of the release of the township from suspension, the position of the claim can be shown on the plat.

137. A mineral survey must not be returned with its connection made only with a corner of the public survey, where the survey of the township within which it is situated is under suspension, nor connected with a mineral monument alone, when situated within the limits of a township the regularity and correctness of the survey of which is unquestioned.

138. In making an official survey, corner No. 1 of each location must be established at the corner nearest the corner of the public survey or location monument, unless good cause is shown for its being placed otherwise. If connections are given to both a corner of the public survey and location monument, corners Nos. 1 should be placed at the corner nearest the corner of the public survey. When a boundary line of a claim intersects a section line, courses and distances from point of intersection to the Government corners at each end of the half mile of section line so intersected must be given.

139. In case a survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, a mineral monument must be established, in the location of which the greatest care must be exercised to insure permanency as to site and construction.

140. The site, when practicable, should be some prominent point, visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock, or landslides, or other natural causes.

141. The monument should consist of a stone not less than 30 inches long, 20 inches wide, and 6 inches thick, set halfway in the ground, with a conical mound of stone 4 feet high and 6 feet base alongside. The letters U. S. L. M., followed by the consecutive number of the monument in the district, must be plainly chiseled upon the stone. If impracticable to obtain a stone of required dimensions, then a post 8 feet long, 6 inches square, set 3 feet in the ground, scribed as for a stone monument, protected by a well-built conical mound of stone of not less than 3 feet high and 6 feet base around it, may be used. The exact point for con-

nection must be indicated on the monument by an X chiseled hereon; if a post is used, then a tack must be driven into the post to indicate the point.

142. From the monument, connections by course and distance must be taken to two or three bearing trees or rocks, and to any well-known and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts, or mouths of adits. Bearing trees must be properly scribed B. T. and bearing rocks chiseled B. R., together with the number of the location monument; the exact point on the tree or stone to which the connection is taken should be indicated by a cross or other unmistakable mark. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the locating monument, with a topographical map of its location, should be furnished the office of the Surveyor-General by the surveyor.

143. Corners may consist of—

First.—A stone at least 24 inches long set 12 inches in the ground, with a conical mound of stone  $1\frac{1}{2}$  feet high, 2 feet base, alongside.

Second.—A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

Third.—A rock in place.

A stone should always be used for a corner when possible, and when so used the kind should be stated.

144. All corners must be established in a permanent and workmanlike manner, and the corner and survey number must be neatly chiseled or scribed on the sides facing the claim. The exact corner point must be permanently indicated on the corner. When a rock in place is used, its dimensions above ground must be stated and a cross chiseled at the exact corner point.

145. In case the point for the corner be inaccessible or unsuitable a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number, should be established. The witness corner should be located upon a line of the survey and as near as possible to the true corner, with which it must be connected by course and distance. The reason why it is impossible or impracticable to establish the true corner must always be stated in the field notes, and in running the next course it should be stated whether the start is made from the true place for corner or from witness corner.

146. The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and other objects, as prescribed in the establishment of location monuments, and when no bearings are given it should be stated that no bearings are available. Permanent objects should be selected for bearings whenever possible.

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections



will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return how and by what visible evidences he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

148. The mineral surveyor should note carefully all topographical features of the claim, taking distances on his lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses, and other data that may be required to map them correctly. All municipal or private improvements, such as blocks, streets, and buildings, should be located.

149. If, in running the exterior lines of a claim, the survey is found to conflict with the survey of another claim, the distances to the points of intersection, and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection, should be described in the field notes: Provided, That where a corner of the conflicting survey falls within the claim being surveyed, such corner should be selected from which to give the bearing, otherwise the corner nearest the intersection should be taken. The same rule should govern in the survey of claims embracing two or more locations the lines of which intersect.

150. A lode and mill-site claim in one survey will be distinguished by the letters A and B following the number of the survey. The corners of the mill site will be numbered independently of those of the lode. Corner No. 1 of the mill site must be connected with a corner of the lode claim as well as with a corner of the public survey or United States location monument.

151. When a placer claim includes lodes, or when several contiguous placer or lode locations are included as one claim in one survey, there must be given to the corners of each location constituting the same a separate consecutive numerical designation, beginning with corner No. 1 in each case.

152. Throughout the description of the survey, after each reference to the lines or corners of a location, the name thereof must be given, and if unsurveyed, the fact stated. If reference is made to a location included in a prior official survey, the survey number must be given, followed by the name of the location. Corners should be described once only.

153. The total area of each location and also the area in conflict with each intersecting survey or claim should be stated. But when locations embraced in one survey conflict with each other such conflicts should only be stated in connection with the location from which the conflicting area is excluded.

154. It should be stated particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the

quarter section, township, and range in which it is located, and the section lines should be indicated by full lines and the quarter-section lines by dotted lines.

155. The title-page of the field notes must contain the post-office address of the claimant or his authorized agent.

156. In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

157. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

158. All mining and other improvements claimed will be located by courses and distances from corners of the survey, or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always No. 1. Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

159. In case of a lode and mill-site claim in the same survey the expenditure of five hundred dollars must be shown upon the lode claim.

160. If the value of the labor and improvements upon a mineral claim is less than five hundred dollars at the time of survey, the mineral surveyor may file with the Surveyor-General supplemental proof showing five hundred dollars expenditure made prior to the expiration of the period of publication.

161. The mineral surveyor will return with his field notes a preliminary plat on blank sent to him for that purpose, protracted on a scale of two hundred feet to an inch, if practicable. In preparing plats the top is north. Copy of the calculations of areas by double meridian distances and of all triangulations or traverse lines must be furnished. The lines of the claim surveyed should be heavier than the lines of conflicting claims.

162. Whenever a survey has been reported in error the surveyor who made it will be required to promptly make a thorough examination upon the premises and report the result, under oath, to the Surveyor-General's office. In case he finds his survey in error he will report in detail all discrepancies with the original survey and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, a joint survey will be ordered to settle the differences with the surveyor who reported the error. A joint survey must be made within ten days after the date of order unless satisfactory reasons are submitted, under oath, for a postponement. The field work must in every sense of the term be a joint and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.



163. The mineral surveyor found in error, or, if both are in error, the one who reported the same, will make out the field notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to the Surveyor-General's office.

164. Inasmuch as amended surveys are ordered only by special instructions from the General Land Office, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject-matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

165. The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

166. The field notes of the amended survey must be prepared on the same size and form of blanks as are the field notes of the original survey, and the word "amended" must be used before the word "survey" wherever it occurs in the field notes.

167. Mineral surveyors are required to make full examinations of all placer claims at the time of survey and file with the field notes a descriptive report, in which will be described—

a. The quality and composition of the soil, and the kind and amount of timber and other vegetation.

b. The locus and size of streams, and such other matter as may appear upon the surface of the claims.

c. The character and extent of all surface and underground workings, whether placer or lode, for mining purposes, locating and describing them.

d. The proximity of centers of trade or residence.

e. The proximity of well-known systems of lode deposits or of individual lodes.

f. The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

g. What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

h. The true situation of all mines, salt licks, salt springs, and mill sites which come to the surveyor's knowledge, or a report by him that none exist on the claim, as the facts may warrant.

i. Said report must be made under oath and duly corroborated by one or more disinterested persons.

168. The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

169. The field work must be accurately and properly performed

and returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at the surveyor's own expense, and if the time required in the examination of the returns is increased by reason of neglect or carelessness, he will be required to make an additional deposit for office work. He will be held to a strict accountability for the faithful discharge of his duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of his duties, or guilty of a violation of said regulations, his appointment will be promptly revoked.

Approved March 22, 1909  
R. A. Ballinger,  
Secretary.

S. V. Proudfit,  
Acting Commissioner.

#### AMENDMENTS.

#### Instructions for Preparation and Disposition of Plats of Survey of Mining Claims

Department of the Interior,  
General Land Office,  
Washington D. C., July 29, 1911.

#### United States Surveyors General:

The following instructions are issued in pursuance of a plan for preparation and disposition of plats of survey of mining claims, which was approved by the First Assistant Secretary of the Interior June 6, 1911.

The surveyor general will prepare the original plat on form 4—675. All lines clear and sharp in black. All letters and figures clear and sharp in black.

The original plat, so prepared, will be signed and dated by the surveyor general and forwarded to the General Land Office flat or in tube and unmounted.

The commissioner will have three photolithographic copies made upon drawing paper, which copies, with the original plat, will be forwarded to the surveyor general, the duplicate, triplicate, and quadruplicate to be signed by him, and the four plats to be filed and disposed of in the same manner as provided for in paragraph 34 of the Mining Regulations, viz: One plat and the original field notes to be retained in the office of the surveyor general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference.

A certain number of photolithographic copies will be furnished the surveyor general for sale at a cost of 30 cents each, and a photolithographic copy printed on tracing paper will be furnished the surveyor general, from which blue prints may be made, to be sold at cost.

Very Respectfully,

S. V. Proudfit,  
Assistant Commissioner.

Approved, July 29, 1911.  
Samuel Adams,  
Acting Secretary.



**Regulation 44, Mining Regulations.**

Department of the Interior,  
General Land Office,  
Washington, D. C., August 8, 1911.

The Honorable,

The Secretary of the Interior.

Sir: I hereby respectfully recommend that regulation number 44 of Mining Regulations, approved March 29, 1909 (37 L. D., 728-786), be amended to read as follows:

44. Before approving for publication any notice of an application for mineral patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any land embraced in a railroad selection, or for which publication is pending or has been made by other claimants, and if, in their opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, they should formally reject the same, giving the reasons therefor, and allow the applicant 30 days for appeal to this Office under the Rules of Practice.

Very Respectfully

S. V. Proudfit,  
Acting Commissioner.

Approved, August 9, 1911.

Samuel Adams,  
Acting Secretary.

## APPENDIX A.

**Time to Commence Adverse Claims and Suits in Alaska Extended.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the district of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days period of publication or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office.

(Public No. 198, Approved June 7, 1910.)

**DIGEST.****MINERAL LAND.****Character of Land.**

The duties of determining the character of land, whether mineral or non-mineral, and of seeing that the public lands are only disposed of as authorized by law rests upon the Land Department, of which the Secretary of the Interior is the head. The decision, therefore, of the Secretary that a specific tract of land is principally valuable for its mineral deposits while undisturbed is binding upon the officers of the Land Department and prevents disposal of the land in any other way than as prescribed by the laws specifically authorizing the sale or disposal of the lands.

Coleman et al, vs. McKenzie et al., 28 L. D. 348.

A patent is not essential to the enlargement of a mining claim held under a valid location not as to form a material block to prosecute his application for patent, is not in itself an abandonment of the claim.

Coleman et al. vs. McKenzie et al., 28 D. L. 348.

Under the public land laws of the United States, valuable for their mineral deposits can be disposed of only under the mining laws.

Coleman et al. vs. McKenzie et al., L. D. 348.

**Classification.**

In classifying unsurveyed lands under the Act of February 26th, 1895, where the entire area of the tract is designated by natural or artificial boundaries as to their character, the classification should be made with reference to the particular section.

Instructions, 26 L. D. 423.

The provision of Section five, Act of February 26, 1895, that hearings held under protest filed against the acceptance of the classification of land as returned by the Commission: "The United States shall be represented and defended by the United States District Attorney, etc.," "requires the said Attorney to assist in procuring the mineral classification on the land, wherever the facts show that to be its true character and to that end such officers should endeavor to sustain the mineral classification of the Commission."

Opinion, 28 L. D. 295.

In case of protest filed under the 5th section of the Act of 1895 against the classification of lands under the said Act, the Department will apply substantially the same rules in determining the character of the land that the Classification Commissioners are directed by said Act to apply.

The rules prescribed by the Act of February 26, 1895, differ from those applied by the Department in ordinary contests involving the character of land for mining location made in any section of land, are declared to be by said Act, *prima facie* evidence of the mineral character of a forty acre subdivision embracing the same.

Holter et al. vs. Northern Pacific R. R. Co., 30 L. D. 442.

To justify a hearing as to the character of land classified under the Act of February 26, 1895, where a protest is not filed until after the prescribed time comes before approval of the classification by the Secretary of the Interior, such as a showing of fraud in the classification must be made as would condemn and avoid it, if sustained by proof produced at the hearing.

Lamb et al. vs. Northern Pacific R. R. Co., 29 L. D. 102.

A protest against the classification of such land justifies a hearing as to



the character of the land where it is shown thereby that the report of the Commissioners which the Secretary of the Interior approved the classification was false and a clear misrepresentation of the character of the land.

Lamb et al. vs. Northern Pacific R. R. Co., 29 L. D. 102.

Luthye et al. vs. Northern Pacific R. R. Co., 675.

Lands valuable on account of limestone deposits contained therein, and more valuable on account of said deposits than for agricultural purposes, are mineral lands within the meaning of the Act of February 26, 1895, provide for the classification of lands within the limits of the Northern Pacific Grant.

Morrill vs. Northern Pacific R. R. Co. et al., 30 L. D. 475.

Section 2333 of the Revised Statutes and the opinion in the case of Becker et al. vs. Sears, 1 L. D. 560, lays down the rules as to what constitutes placer and lode claims.

Whatever is recognized as mineral by the standard authorities, whether of metallic or other substances when found in the public lands in quantities and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, must be treated as coming within the purview of the mining laws.

Pacific Coast Marble Co. vs. Northern Pacific R. R. Co. et al., 25 L. D. 233.

Alldritt vs. Northern Pacific R. R. Co., 25 L. D. 349.

Union Oil Company, 25 L. D. 251, overruling case of Ferrell vs. Hoge et al., 18 L. D. 81.

Borax, soda, alum, oil, fire-clay, kaolin, gypsum, limestone, phosphate, guano, marble, slate, petroleum and asphaltum are mineral lands.

Land more valuable for the deposits of sand-stone therein than for agricultural purposes are to be so classified under the Act of February 26, 1895.

Beaudette vs. Northern Pacific R. R. Co., 29 L. D. 248.

Coal is not mineral within the meaning of the Act of June 3, 1878.

Opinion, 2nd L. D. 857.

On an issue joined as to the character of a tract, the matter to be determined is whether, as a present fact, the land is more valuable for mineral than for agricultural purposes, the mineral claimant for land returned as agricultural land, must show as a present fact, that mineral can be obtained therefrom in such quantities as to make the land more valuable for mineral than agricultural purposes.

Where a mineral entry has been allowed on land returned as agricultural land, the burden of proof will lie upon the one who thereafter alleges the land to be unfit for agricultural land.

On proof of the mineral character of a tract before the allowance of a mineral entry therefor, the burden of the proof is upon the one who asserts the non-mineral character of the tract, even if returned as agricultural.

If the presumptive mineral character of the land is based upon the exploration of only one portion thereof, the burden is assumed by the one who alleges the agricultural character of such land, and is sustained by evidence of exploration on some portion sufficient to demonstrate the fact of its non-mineral character and thereby overcoming the effect of the alleged prior exploration or discovery.

Walton vs. Batton et al., 14 L. D. 54.

Winters et al. vs. Bliss, 14 L. D. 59.

Johns vs. Marsh et al., 15 L. D. 196.

Cutting vs. Reinininghaus, 7 L. D. 265.

Creswell Mining Company vs. Johnson, 8 L. D. 440.

Tinkham vs. McCaffrey, 13 L. D. 517.

Northern Pacific R. R. Co. vs. Marshall, 17 L. D. 545.

John vs. Marsh et al., 15 L. D. 196.

State of Washington vs. McBride, 25 L. D. 167.

In case of a hearing to determine the mineral or non-mineral character of a tract of land theretofore held by the Department to be particularly valuable for its mineral deposit, the burden of proof is with the agricultural claimants and incumbent upon them to clearly overcome the effect of the former decision.

Coleman et al. vs. McKenzie et al., 28 L. D. 348.

The burden of proof is upon the agricultural claimant for the return of land, to show the fact that it is non-mineral in character, but he is not required to prove affirmatively its agricultural character.

Cutting vs. Reinininghaus et al., 7 L. D. 265.

Kane et al. vs. Devine, 7 L. D. 532.

Mulligan vs. Hanson, 10 L. D. 311.

On a hearing to show the alleged agricultural character of a tract, held as a mineral claim, and that has once been adjudged mineral, the agricultural claimant should be required to prove the abandonment of the mining claim.

McCharles vs. Roberts, 20 L. D. 564.

Caldwell vs. Gold Bar Mining Co., 24 L. D. 258.

A final decision in which a tract is held to be mineral, is only conclusive up to the period covered by the inquiry, and will not preclude a subsequent investigation as to the character of said tract on the allegation that the mining claims thereon have been abandoned and that the land is as a present fact, agricultural.

Dargin et al. vs. Koeh, 20 L. D. 384.

The final decision of the Department holding land to be non-mineral is conclusive up to the period of the hearing and such consideration will not preclude a further consideration based on subsequent exploration.

Stinchfield vs. Pierce, 19 L. D. 12.

In a hearing ordered to determine the alleged non-mineral character of land embraced in an agricultural entry made at the conclusion of a prior contest involving the character of land, the evidence must be confined to discoveries after the date of the 1st hearing, and prior to the allowance of the entry.

Leach et al. vs. Patten, 24 L. D. 573.

The non-mineral character of a tract of land having been determined, the Department is not justified in ordering another hearing on the same issue on the absence of a clear showing or development made since the prior hearing that clearly demonstrates that since such hearing mineral has been discovered in such quantities as to overcome the effect of the previous judgment as to the character of the land.

Mackal et al. vs. Goodsell, 24 L. D. 553.

A decision that a tract is mineral in character will not prevent a subsequent hearing involving the same question where a change in the character of the land is alleged, but the showing in such cases must be clear and convincing.

Town of Aldridge vs. Craig, 25 L. D. 505.

The existence of gold in non-paying quantities will not preclude an agricultural entry on the land.

Etling et al. vs. Potter, 17 L. D. 424.

The character of land acquired as mineral, must be shown by the actual production from mining, and by satisfactory evidence that mineral exists on the land in sufficient quantity to make the same more valuable for mining than agricultural purposes.

Savage et al. vs. Boynton, 12 L. D. 612.

The location of a mining claim in conformity with law on land returned as agricultural, raises the presumption that the land is mineral in character and the burden of proof is thereafter upon the one alleging the agricultural character of the land.

State of Washington vs. McBride, 18 L. D. 199.

Sweeney vs. Northern Pacific R. R. Co., 20 L. D. 394.

Land must be held non-mineral where no discoveries of appreciable value have been made, and it does not appear that a further expenditure would develop the presence of mineral in paying quantities.

Reed et al. vs. Lavalley et al., 26 L. D. 100.

Coal lands are mineral lands within the meaning of the laws relating to public lands.

Brown vs. Northern Pacific R. R. Co., 31 L. D. 29.

Lands containing deposits of ordinary brick clay are not mineral within the meaning of the mining laws, although more valuable for such deposit than for agricultural purposes.

King et al. vs. Bradford, 31 L. D. 108.

To sustain an application for mineral patent as against a person alleging land to be non-mineral, it must appear that the mineral exists on the land in quantities and value sufficient to subject it to disposal under the mining laws.

Brophy et al. vs. O'Hare, 34 L. D. 596.

Consult also the following cases:

Jaw Bone Lode vs. Damond Placer, 34 L. D. 72.

Hollman vs. Central Montana Mines Co., 34 L. D. 568.

Richmond and other Lode Claims, 34 L. D. 554.

Pikes Peak and other Lodes, 34 L. D. 281.



Frank G. Peck, 34 L. D. 682.

Laughing Water Placer, 34 L. D. 56.

Alaska Placer Claim, 34 L. D. 41.

Mattes vs. Treasure Tunnel Mining and Reduction Co., modifying 34 L. D.

314. (Citation) 33 L. D. 338.

Beverage et al. vs. Northern Pacific R. R. Co., 36 L. D. 40.

See also 36 L. D. 109.

Deposits of gravel and sand suitable for mixing of cement for concrete construction but having no peculiar property or characteristic, giving them especial value, but deriving their general value from proximity to a town, do not render the land in which they are found mineral in character within the meaning of the land laws to bar their entry under the homestead laws, notwithstanding the fact that they may be more valuable than for agricultural purposes.

Zimmerman & Brunson, 39 L. D. 310.

The fact that a tract of land was, prior to survey, classified as mineral under the Act of February 26, 1895, cannot be considered as a classification of the land as mineral at the time of "Actual Government Survey," within the meaning of the Act of August 5, 1892.

St. Paul, Minneapolis & Manitoba Railway Co., 34 L. D. 211.

### **Publication.**

Land not embraced in an application for patent for a mining claim in a published or posted notice and other proceedings cannot be embraced in the entry. The simplest legal subdivisions of the public survey provided for by the mining laws, as a subdivision of ten acres in square form. Such laws do not contemplate any location and entry or placer mining claims.

### **Discovery and Expenditure.**

See 35 L. D. 361, 35 L. D. 485, 35 L. D. 493, 35 L. D. 617, 35 L. D. 652.

### **Placer.**

The provision of the Statute requires placer claims upon surveyed lands to conform in their exterior limits, to the legal subdivisions, and the public laws furnish no authority in the location of placer claims upon unsurveyed lands for the placing of lines of such locations upon previously patented or entered lands.

35 L. D. 557.

There is no warrant in the mining laws for the extending arbitrarily, and without any bases or fact therefor, the original lines of a location in an irregular or zig-zag manner for the purpose of controlling along the sides any extra lands in the location, to suit the convenience of the locator.

35 L. D. 22.

### **Development Work.**

An applicant for a patent to a mining claim and invoking the provisions of Section 2332 of the Revised Statutes, if it appears that he or his grantors have held and worked the claim for the period of time prescribed by the legal statutes of mining claims, is not required to produce record evidence of his location.

Section 2332 merely declares that the proof shall be sufficient to show possessory title of the applicant.

The absence of any adverse claim does not dispense with the requirements of Section 2325 to the expenditure of \$500 in labor and improvements on the claim as a prerequisite to the issuance of patent.

Capital No. 5 Placer Mining Claim, 34 L. D. 462.

The main purpose of Section 2332 of the Revised Statutes is to declare that evidence of the holding and working of a mining claim for a period equal to the time prescribed by the legal Statute of Limitations for mining claims shall be construed as sufficient, establishing the location of the claim and the applicant's right therein, "in the absence of any adverse claim," and there is no authority for restricting the application of the provisions of said section to such cases only, in which the applicant for patent is unable, by reason of the lapse of time or loss of the mining records by fire or otherwise or failure to prove a possessory title required by the mining laws.

Little Emily Mining and Milling Co., 34 L. D., 182.

### **Payment.**

Payment is required by Section 2325 of the Revised Statutes for lands embraced in a mining claim as a condition to the issuance of patent therefor

under the mining laws, and the applicant is not relieved from this payment by the Act of May 27, 1902.

Raven Mining Company, 34 L. D., 306.

Placer mining claims must be located in accordance with Section 2331 of the Revised Statutes.

Rialto No. 2 Placer Mining Claim, 34 L. D., 44.

Mineral lands are exempted from the land grant of the State of South Dakota.

State of South Dakota v. Delicate, 34 L. D., 717.

### **Verification.**

The provision of Section 2325 of the Revised Statutes that the application for patent to a mining claim shall be "under oath" and the provision of Section 2335 for the verification of said application "before any officer authorized to administer oaths within the land department" their observance is essential to the jurisdiction of the legal officers to entertain the patent proceedings.

35 L. D., 455.

### **Possession.**

Owners of unpatented mining claims located upon the mineral lands of the United States are entitled to exclusive and peaceable possession of their claims so long as they continue to comply with the requirements of the laws respecting possessory rights, and are not required to apply for patent at any time in order to preserve such possessory rights.

In the administration of the public land laws, the Land Department has no authority to determine on their behalf, alleged rights of claimants therein, except where such claimants seek to obtain legal or permanent title to the lands claimed. Where claimant seeks to obtain legal title to a tract of public land the inquiry by the Land Department is directed to questions affecting his right to have such legal title conveyed to him, but not to questions relating to possessory or other rights unrelated to and disconnected with his application for legal title.

Nome & Sinook Co. et al. v. Townsite of Nome. § 4 L. D., 274.

### **Adverse Claims.**

In determining whether an adverse judicial proceeding has been instituted within the statute, the Department will not undertake to review the failure of the court of competent jurisdiction, while the suit so begun is pending within said court.

Gypsum Placer Claims, 37 L. D., 484. Section 2325 of the Revised Statutes construed.

E. J. Ritter et al., 37 L. D., 115.

For further information on the subject, consult table of Revised Statutes, cited and construed, and table of Acts of Congress, cited and construed.

See 35 L. D., 304; 35 L. D., 495; 35 L. D., 551.

### **Mining on Indian Lands.**

Valuable mineral deposits which have been found on lands allotted in severalty to an Indian under the Act of June 6, 1900, are not withheld to the allottee or reserved to the United States, and cannot be acquired under the mining laws. But such land may, with the approval of the Secretary of the Interior, be leased by the allottee under the General Statute relating to the giving of a mining lease to the allottees.

Acme Cement Co., 31 L. D., 125.

See in this connection 31 L. D., 154.

Rectangular tracts of five acres may be recognized and treated as legal subdivisions.

Roman Placer Mining Co., 34 L. D., 260.

Consult for this subject the following cases:

Extra Lode Claim, 34 L. D., 591.

Brophy et al. v. O'Hare, 34 L. D., 596.

State of South Dakota v. Walsh, 34 L. D., 723.

Alaska Placer Claim, 34 L. D., 40.

For general discussion of mineral lands and selections, consult the following cases:

Bakersfield Fuel & Oil Co. v. Saaburg, 31 L. D., 312.

And Instructions, 135.

State of Utah, 32 L. D., 117.

Northern Pacific Railroad Co., 32 L. D., 611.

Nome & Sinook Co. et al. v. Townsite of Nome, 34 L. D., 102.



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## MORTGAGES.

See Alienation.

See Reclamation.

See Water Rights.

The question of a mortgage as applied to public lands, and particularly to the homestead entry, is a very important one. There is no specific law which will permit of mortgages on homesteads prior to issuance of the Register's final certificate.

By the Act of Congress, approved June 6th, 1912, and generally known as the Three-year Homestead Law (see page 303), it is provided:

"That no certificate shall be given, or patent issued, until the expiration of three years from the date of such entry, and not until the entryman (or in case of his death his heirs or devisee, or in case of a widow making such entry, her heirs or devisees in case of her death) makes an affidavit that no part of said land has been alienated, except as provided in Section 2288, and that he, she or they will bear true allegiance to the Government of the United States, then in such case he, she or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law."

This statute prohibits alienation of a homestead before submission of final proof. There is no law which will prevent claimant from mortgaging the land after issuance of final certificate.

There is apparently a distinction between absolute alienation and a conditional one through a mortgage which is given for certain purposes. In other words, a distinction is recognized between absolute conveyance of the land and a mortgage given for a specific purpose, not inconsistent with the good faith of the entryman.

The applicant for homestead entry is required to make affidavit, among other things, that he will not make any agreement or contract, in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which he may acquire from the Government of the United States will inure, in whole or in part, to the benefit of any person except himself.

The principle thus announced was followed in the case of *Larson vs. Weisbecker*, 1 L. D., 422, Sec. 2262, of the Revised Statutes, was under consideration, in which the Secretary said:

"I am aware that the former rulings of your office (addressing the Commissioner of the General Land Office) and of this department—following the precedent of an early decision—have held that an outstanding mortgage given by a preemptor upon the lands embraced in his filing defeats his right of entry upon the ground that such mortgage is a contract or agreement by which title to the lands might inure to some other person than himself.

"A careful consideration of this section leads me to a different conclusion, and to the opinion that unless it shall appear under the rules of law applicable to the construction of contracts or otherwise, that the title shall inure to another person, it does not debar the right of entry; and that the mere possibility that the title might so result"—as in the case of an ordinary mortgage—"is not sufficient to forfeit the claim."

It was held by the Department in the case of William H. Ray (6 L. D., 340):

"There is no law or ruling of this Department now in force that prohibits a preemptor, who has complied with the requirements of the preemption law in good faith, from mortgaging his claim to procure money to prove up and pay for his land."

The department held in the case of Mudgett vs. Dubuque & Iowa City Rd. Co. (8 L. D., 243):

"That the alienation by a mortgage is not an absolute alienation as would defeat the good faith and bona fides of an entryman under the above section."

The section referred to was not changed in this particular by the Act of Congress known as the Three-year Homestead Law.

There seems to be little doubt that an entryman may mortgage the land before proof to secure money with which to pay for the same.

Speaking about the principle as announced in the case of Larson vs. Weisbecker, and Wm. H. Ray, *supra*, the Secretary said:

"Following the principle thus announced, I see no good reason why a homestead entryman, whose good faith is otherwise apparent, may not mortgage his claim, before final certificate, to procure money with which to improve his land, or for any other purpose, not in itself tending to impeach his bona fides."

Mudgett vs. Dubuque & Iowa City Rd. Co. (8 L. D., 243).

Having the question of a mortgage under consideration, the Secretary in the case of Haling vs. Edy (9 L. D., 337), said:

"A preemptor who has, in good faith, complied with the law, may mortgage his claim to procure money for the purpose of making final proof and payment."

It was said in the case of Murdock vs. Ferguson (13 L. D., 198):

"A mortgage given in good faith on the purchase of the improvements and prior possessory right of another, and to secure the repayment of money advanced to pay the Government price of the land, does not defeat the pre-emptive right."

In a comparatively recent case it was said:

"A charge of abandonment is not supported by showing that the entryman has executed a deed to the land prior to final proof, where it appears that said instrument was intended to serve the purpose of a mortgage to secure the payment of money advanced to the entryman for his personal use, and the improvement of his claim." See the case of Kezar v. Horde, 27 L. D., 148.

Mortgages of lands embraced in homestead entries within reclamation projects may file in the local land office for the district within which the land is located a notice of such mortgage, and shall become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the land as is required to be given the entryman in connection with such proceeding. Every such notice of a mortgage received must be forthwith noted upon the records of the local land office and be promptly reported to the General Land Office, where like notation will be made. Relinquishment of a homestead entry within a reclamation project upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein, nor will an assignment of such an entry or part thereof under the Act of



June 23, 1910 (36 Stat., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

### Confirmation.

"An entry that is fraudulent in its inception, and is transferred and mortgaged by the transferee prior to March 1st, 1888, is not confirmed by Section 7, Act of March 3, 1891, where at the date of said mortgage the entry is under attack, as shown by the records of the local office, on the charge of having been made in the interest of the transferee, and such allegations is duly established by the evidence submitted. See the case of *Roberts vs. Tobias, et al.*, 13 L. D., 556.

### Notice.

(1) "A mortgagee who files no notice of his interest in the local office can not call into question the validity of the proceedings against the entry." *Roberts v. Tobias et al.*, 13 L. D., 556.

(2) "If the transferee had on file in the local office a statement showing his interest in the entry, he was entitled to notice of its cancellation; otherwise he is estopped from calling in question the validity of the proceedings against it."

The case of *Chas. C. Ferry*, 14 L. D., 126, citing the cases of—

*Cyrus H. Hill*, 5 L. D., 276.

*A. Joline*, 5 L. D., 589.

*American Investment Co.*, 5 L. D., 603.

*Van Brunt v. Hammon et al.*, 9 L. D., 561.

*John J. Dean*, 10 L. D., 446.

*Otto Soldam*, 11 L. D., 194.

*Robinson v. Knowles*, 12 L. D., 462.

(3) "A transferee is not entitled to be heard on rehearing unless he shows that he can furnish further and better evidence than that produced by the entryman, nor can he question the validity of the proceedings against the entry if notice of his claim was not filed in the local office." See the case of *Robinson v. Knowles*, 12 L. D., 462.

(4) Any proceeding by the Government against an entry, the local officers and special agents are under no obligation to examine court records to ascertain the interests of transferees."

*U. S. v. Lawrence et al.*, 16 L. D., 47.

(5) "An assignee or mortgagee may file in the local office, under oath, a statement showing his interest in a pending entry, and have the same noted of record, and thereafter he will be entitled to notice of any adverse action on said entry."

*American Investment Co.*, 5 L. D. 603.

(6) "A transferee who has notified the local office of his interest is entitled to notice of all action affecting the entry under which he holds."

(7) "In the absence of an adverse claim, a transferee may submit supplemental proof, where the final proof is found insufficient but bad faith is not apparent."

*Daniel R. McIntish*, 8 L. D., 641.

(8) "A transferee, holding under a final certificate, is not entitled to be heard in defense of an entry, but if he fails to file a statement in the local office showing his interest under said entry, he can not plead want of notice as against the contest proceedings of another.

"The question of notice is jurisdictional and may be raised any time, and when raised, or apparent on the face of the record, the department is bound to take cognizance thereof.

"In service by notice of publication, posting a copy in the office of the Register, during the period of publication, is an essential without which notice is incomplete."

*Van Brunt v. Hammon et al.*, 9 L. D., 561.

(9) "A mortgagee, or transferee, may file in the local office notice of his interest in any entry pending therein, and when such notice has been filed said mortgagee, or transferee, may be heard to sustain the validity of such

entry, and should be made a party to any proceedings involving the cancellation thereof.

"An entry, however, canceled for bad faith on the part of the entryman without notice to the transferee who has filed a statement of his interest, will not be reinstated unless reversible or prejudicial error is made to appear in the judgment of cancellation.

Manitoba Mtge. & Invest. Co., 10 L. D., 566.

(10) "Where proceedings are reinstated by the Government against a final entry, which has been mortgaged or transferred, and during the pendency of such proceeding the entryman files a relinquishment, the entry should not be canceled until final decision upon the rights of the mortgagee or transferee, and no application to another of land should be received until the pending proceedings have been disposed of, and the entry formally canceled upon the records of the local office."

Henry Gimbel et al., 38 L. D., 198.

(11) "The sale or incumbrance of the land after final proof brings no new element into the case when the validity of the entry is under consideration, though the purchaser or mortgagee is accorded the right to show that the entryman had in fact complied with the law.

"There is no authority of law for the substitution of the mortgagee in the place of the entryman."

Geo. B. Thompson, 6 L. D., 263.

(12) "Where one is induced by another to contract for disposal of a part of a homestead entry, ignorant of any violation of law, but on learning the illegality of the contract, voluntarily rescinds it, the entry will not be canceled on a contest charging said fraudulent contract, instituted by the party who induced it."

Blanchard v. Butler, 37 L. D., 677.

(13) "A mortgagee, after final entry, is entitled to be heard on appeal, in case the entry is subsequently held for cancellation. The case of R. M. Chrisinger cited and distinguished."

R. M. Sherman et al., 4 L. D., 544.

(14) "A transferee or entryman has the right to appear and defend in case the entry is attacked."

Windsor v. Sage, 6 L. D., 440.

(15) Section 2288 of the Revised Statutes provides: "Sec. 2288. Any person who has already settled, or hereafter may settle on the public lands, either by permission or by virtue of the homestead law, or any amendments thereto, shall have the right to transfer by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, canals, reservoirs or ditches for irrigation or drainage across such preemption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their preemption or homestead." (Sec. 3 of the Act of March 3, 1891, enacts that Sec. 2288 of the Revised Statutes be amended so as to read as follows:

"Sec. 2288. Any bona fide settler under the preemption homestead or other settlement law shall have the right to transfer, by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, canals, reservoirs or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect title to his claim."

For the right of assignment of lands within a reclamation project, see Circular of September 12, 1910, and December 17, 1910, and April 29, 1912, page 87.

## **REGULATIONS GOVERNING ENTRIES WITHIN NATIONAL FORESTS, SUPERSEDING CIRCULAR OF JULY 23, 1907.**

Department of the Interior,

General Land Office,

Washington, D. C., December 16, 1908.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is called to the Act of June 11, 1906 (34 Stat., 233), the copy of which is hereto attached as Appendix A. This Act authorizes homestead entries for lands within national forests, and you are instructed thereunder as follows:



1. Both surveyed and unsurveyed lands within national forests which are chiefly valuable for agriculture and not needed for public use may, from time to time, be examined, classified, and listed under the supervision of the Secretary of Agriculture, and lists thereof will be filed by him with the Secretary of the Interior, who will then declare the listed lands subject to settlement and entry.

2. Any person desiring to enter any unlisted lands of this character should present an application for their examination, classification, and listing to the district forester for the district in which the land is located in the manner prescribed by regulations issued by the Agricultural Department. (The present regulations are attached as Appendix B.)

3. When any lands have been declared subject to settlement and entry under this Act, a list of such lands, together with a copy of the notice of restoration thereof to entry and authority for publication of such notice, will be transmitted to the Register and Receiver for the district within which the lands are located. Upon receipt thereof the Register will designate a newspaper published within the county in which the land is situated and transmit to the publishers thereof the letter of authority and copy of notice of restoration, said notice to be published in the designated newspaper once each week for four successive weeks. You will also post in your office a copy of said notice, the same to remain posted for a period of sixty days immediately preceding the date when the lands are to be subject to entry. If no paper is published within the county, publication should be made in a newspaper published nearest the land.

4. The cost of publishing the notice mentioned in the preceding paragraph will not be paid by the receiver, but the publisher's vouchers therefor, in duplicate, should be forwarded to the Department of the Interior, Washington, D. C., by the publisher, accompanied by a duly executed proof of publication. The Register will require the publisher to promptly furnish him with a copy of the issue of the paper in which such notice first appears, will compare the published notice with that furnished by this office, and in case of discrepancy or error cause the publisher to correct the printed notice and thereafter publish the corrected notice for the full period of four weeks.

5. In addition to the publication and posting above provided for, you will, on the day the list is filed in your office, mail a copy of the notice to any person known by you to be claiming a preferred right of entry as a settler on any of the lands described therein, and also at the same time mail a copy of the notice to the person on whose application the lands embraced in the list were examined and listed, and advise each of them of his preferred right to make entry prior to the expiration of sixty days from the date upon which the list is filed.

6. Any person qualified to make a homestead entry who, prior to January 1, 1906, occupied and in good faith claimed any lands listed under this Act for agricultural purposes, and who has not abandoned the same, and the person upon whose application such land was listed, has, each in the order named, the preferred right to enter the lands so settled upon or listed at any time within sixty

days from the filing of the list in your office. Should an application be made by such settler during the sixty-day period you will, upon his showing by affidavit the fact of such settlement and continued occupancy, allow the entry. If an application is made during the same period by the party upon whose request the lands were listed, you will retain said application on file in your office until the expiration of the sixty-day period, or until an entry has been made by a claimant having the superior preference right. If no application by a bona fide settler prior to January 1, 1906, is filed within the sixty-day period, you will allow the application of the party upon whose request the lands were listed. If entry by a person claiming a settler's preference right is allowed, other applications should be rejected without waiting the expiration of the preferred-right period. Of the applicants for listing, only the one upon whose request a tract is listed secures any preference right. Other applicants for the listing of the same tract acquire no right by virtue of such applications.

7. The fact that a settler named in the preceding paragraph has already exercised or lost his homestead right will not prevent him from making entry of the lands settled upon if he is otherwise qualified to make entry, but he can not obtain patent until he has complied with all of the requirements of the homestead law as to residence and cultivation and paid \$2.50 per acre for the land entered by him.

8. When an entry embraces unsurveyed lands, or embraces an irregular fractional part of a subdivision of a surveyed section, the entryman must cause such unsurveyed lands or such fractional parts to be surveyed at his own expense by a reliable and competent surveyor, to be designated by the United States Surveyor-General, at some time before he applies to make final proof. Survey will not be required when the tracts can be described by legal subdivisions, or as a quarter or a half of a surveyed quarter-section or rectangular lotted tract, or as a quarter or a half of a surveyed quarter-quarter-quarter section or rectangular lotted tract.

9. Application for survey must be made by the homestead claimants or their duly authorized attorneys to the United States Surveyor-General of the State wherein the land is situated. The applications must describe the claim to be surveyed by metes and bounds following the description contained in the listing and entry. The claimant may designate the surveyor he desires to do the work, who will, in the absence of objection, be authorized so to do by the United States Surveyor-General. Surveys will be numbered by the United States Surveyor-General consecutively when the orders for survey are issued, beginning with No. 37, thus "H. E. S. No. —."

The surveys must be actually made on the ground by the surveyor designated by the United States Surveyor-General, must be in strict conformity with or be embraced within the area described in the listing and entry, and the field notes and preliminary plat promptly returned to the Surveyor-General.

10. The corners of each claim must be numbered consecutively, beginning with No. 1; the corner and survey numbers must be neatly chiseled or scribed on the side (facing the claim) of the stone, post, or rock in place marking the corner. The corners may consist of a stone not less than 24 inches long, set 12 inches in the



ground; a post not less than 3 feet long by 4 inches square, set 18 inches in the ground, or a rock in place. Corner No. 1 of each claim must be connected by course and distance with an established corner of the public surveys, or if there be no corner within a reasonable distance with a United States location monument, which may be established by the surveyor at some prominent point in the vicinity, and may consist of a stone not less than 30 by 20 by 6 inches, set 15 inches in the ground, or a post 8 feet long 6 inches square, set 3 feet in the ground. The letters U. S. L. M. and number of the monument should be chiseled or cut upon the side of the monument and a detailed description thereof furnished the Surveyor-General by the surveyor. Such bearings from the corners of the claims and U. S. L. monument should be taken to near-by prominent objects as will serve to identify the locus of the claim. Upon the return of the field notes of survey, which must be verified by the affidavit of the surveyor, executed before any officer qualified to administer oaths and having a seal, and the preliminary plat, the Surveyor-General will cause same to be examined, and if found regular, approve the same and cause to be prepared three sets of field notes and four plats of the claim, deliver to the claimant one plat to be posted on the claim; transmit two plats and two sets of field notes to the Register and receiver of the local land office, one set to be forwarded to this office, with the final proof of claimant, and one plat and field notes to be retained in the office of the Surveyor-General. Action upon applications for survey and upon the surveys when returned must be promptly had. Surveys of homestead claims heretofore made may be accepted and approved by Surveyors-General if in substantial conformance to the requirements herein set forth.

11. The commutation provisions of the homestead laws do not apply to entries made under this Act, but all entrymen must make final proof of residence and cultivation within the time, in the manner, and under the notice prescribed by the general provisions of the homestead laws, except that all entrymen who are required by the preceding paragraph to have their lands, or any portion of them, surveyed must, within five years from the date of their settlement, present to the Register and Receiver their application to make final proof on all of the lands embraced in their entries, with a certified copy of the plat and field notes of their survey attached thereto.

12. In all cases where a survey of any portion of the lands embraced in an entry under this Act is required, the Register will, in addition to publishing and posting the usual final-proof notices, keep a copy of the final-proof notice, with a copy of the field notes and the plat of such survey attached, posted in his office during the period of publication, and the entryman must keep a copy of the final-proof notice and a copy of the plat of his survey prominently posted on the lands platted during the entire period of publication of notice of intention to submit final proof, and at the same time his final proof is offered he must file an affidavit showing the date on which the copies of the notice and plat were posted on the land and that they remained so posted during such period, giving dates.

13. Section 1 of the said Act of June 11, 1906, having been amended by the Act of May 30, 1908 (35 Stat., 554), the only

counties in southern California in which entries thereunder can not be made are San Luis Obispo and Santa Barbara, to which counties the Act of June 11, 1906, does not apply. Entries made of lands in the Black Hills National Forest can be made only under the terms and upon the conditions prescribed in sections 3 and 4 of the Act of June 11, 1906, as amended by the act of February 8, 1907 (34 Stat., 883).

14. This Act does not authorize any settlements within forest reserves except upon lands which have been listed, and then only in the manner mentioned above, and all persons who attempt to make any unauthorized settlement within such reserves will be considered trespassers and treated accordingly.

Very respectfully,

Fred Dennett, Commissioner.

Approved.

James Rudolph Garfield,

Secretary.

See 38 L. D., 278, for Instructions to Surveyors-General relative to surveys.

#### APPENDIX A.

An Act to provide for the entry of agricultural lands within forest reserves.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture may in his discretion, and he is hereby authorized, upon application or otherwise, to examine and ascertain as to the location and extent of land within permanent or temporary forest reserves, except the following counties in the State of California: Inyo, Tulare, Kern, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego; which are chiefly valuable for agriculture, and which, in his opinion, may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes, and may list and describe the same by metes and bounds, or otherwise, and file the lists and descriptions with the Secretary of the Interior, with the request that the said lands be opened to entry in accordance with the provisions of the homestead laws and this act.

Upon the filing of any such list or description the Secretary of the Interior shall declare the said lands open to homestead settlement and entry in tracts not exceeding one hundred and sixty acres in area and not exceeding one mile in length, at the expiration of sixty days from the filing of the list in the land office of the district within which the lands are located, during which period the said list or description shall be prominently posted in the land office and advertised for a period of not less than four weeks in one newspaper of general circulation published in the county in which the lands are situated: Provided, That any settler actually occupying and in good faith claiming such lands for agricultural purposes prior to January first, nineteen hundred and six, and who shall not have abandoned the same, and the person, if qualified to make a homestead entry upon whose application the land proposed to be entered was examined and listed, shall, each in the order named, have a preference right of settlement and entry: Provided further, That any entryman desiring to obtain patent to any lands described by metes and bounds entered by him under the provisions of this Act shall, within five years of the date of making settlement, file, with the required proof of residence and cultivation, a plat and field notes of the lands entered, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of such lands, which shall be distinctly marked by monuments on the ground, and by posting a copy of such plat, together with a notice of the time and place of offering proof, in a conspicuous place on the land embraced in such plat during the period prescribed by law for the publication of his notice of intention to offer proof, and that a copy of such plat and field notes shall also be kept posted in the office of the register of the land office for the land district in which such lands are situated for a like period; and further, that any agricultural lands within forest reserves may, at the discretion of the Secretary, be



surveyed by metes and bounds, and that no lands entered under the provisions of this Act shall be patented under the commutation provisions of the homestead laws, but settlers, upon final proof, shall have credit for the period of their actual residence upon the lands covered by their entries.

Sec. 2. That settlers upon lands chiefly valuable for agriculture within forest reserves on January first, nineteen hundred and six, who have already exercised their lost homestead privilege, but are otherwise competent to enter lands under the homestead laws, are hereby granted an additional homestead right of entry for the purposes of this act only, and such settlers must otherwise comply with the provisions of the homestead law, and in addition thereto must pay two dollars and fifty cents per acre for lands entered under the provisions of this section, such payment to be made at the time of making final proof on such lands.

Sec. 3. That all entries under this act in the Black Hills Forest Reserve shall be subject to the quartz or lode mining laws of the United States, and the laws and regulations permitting the location, appropriation, and use of the waters within the said forest reserves for mining, irrigation, and other purposes; and no titles acquired to agricultural lands in said Black Hills Forest Reserve under this act shall vest in the patentee any riparian rights to any stream or streams of flowing water within said reserve; and that such limitation of title shall be expressed in the patents for the lands covered by such entries.

Sec. 4. That no homestead settlements or entries shall be allowed in that portion of the Black Hills Forest Reserve in Lawrence and Pennington counties in South Dakota except to persons occupying lands therein prior to January first, nineteen hundred and six, and the provisions of this act shall apply to the said counties in said reserve so far as is necessary to give and perfect title of such settlers or occupants to lands chiefly valuable for agriculture therein occupied or claimed by them prior to the said date, and all homestead entries under this act in said counties in said reserve shall be described by metes and bounds survey.

Sec. 5. That nothing herein contained shall be held to authorize any future settlement on any lands within forest reserves until such lands have been open to settlement as provided in this act, or to any way impair the legal rights of any bona fide homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve.

Approved, June 11, 1906.—(34 Stat., 233.)

An Act Excepting certain lands in Pennington County, South Dakota, from the operation of the provisions of section four of an Act approved June eleventh, nineteen hundred and six, entitled "An Act to provide for the entry of agricultural lands within forest reserves."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described townships in the Black Hills Forest Reserve, in Pennington County, South Dakota, to wit: Townships one north, one east; two north, one east; one north, two east; two north, two east; one south, one east; two south, one east; one south, two east; and two south, two east, Black Hills meridian, are hereby excepted from the operation of the provisions of section four of an Act entitled "An Act to provide for the entry of agricultural lands within forest reserves," approved June eleventh, nineteen hundred and six. The lands within the said townships to remain subject to all other provisions of said Act.

Approved, February 8, 1907.—(34 Stat., 883.)

An Act To amend an Act approved June eleventh, nineteen hundred and six, entitled "An Act to provide for the entry of agricultural lands within forest reserves."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an Act entitled "An Act to provide for the entry of agricultural lands within forest reserves," approved June eleventh, nineteen hundred and six, be amended by striking out of section one the following words: "Except the following counties in the State of California: Inyo, Tulare, Kern, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego."

Approved, May 30, 1908.—(35 Stat., 554.)

## APPENDIX B.

Regulations Governing Applications Under the Act of June 11, 1906.  
U. S. Department of Agriculture,  
Forest Service.

1. All applications for the listing of lands under the act of June 11, 1906, must be signed by the person who desires to make entry, and must be mailed to the district forester for the district in which the land is located.

2. The person upon whose application the land is listed has the preference right of entry, unless there was a settler on the land prior to January 1, 1906, in which event the settler has the preference right.

3. Persons having preference rights under the act may file their entries at any time within sixty days after the filing of the list in the local land office. If they do not make entry within that time, the land will be subject to entry by the first qualified person to make application at the local land office.

4. All applications must give the name of the national forest and describe the land by legal subdivisions, section, township, and range, if surveyed, and if not surveyed, by reference to natural objects, streams, or improvements, with sufficient accuracy to identify it.

5. Section 2 of the act gives, within national forests only, an additional homestead right of entry upon lands chiefly valuable for agriculture, to settlers prior to January 1, 1906, who have already exercised or lost their homestead privilege, but who are otherwise competent to enter under the homestead laws. The general act of February 8, 1908, provides that any person who, prior to February 8, 1908, made entry under the homestead laws, but for any cause has lost, forfeited, or abandoned his entry shall be entitled to the benefits of the homestead law as though such former entry had not been made, except when the entry was canceled for fraud or was relinquished for a valuable consideration.

6. The fact that an applicant has settled upon land will not influence the decision with respect to its agricultural character. Settlers must not expect to include valuable timber land in their entries. Settlement made after January 1, 1906, and in advance of opening by the Secretary of the Interior, is not authorized by the act, will confer no rights, and will be trespass.

7. Entry under the act is within the jurisdiction of the Secretary of the Interior, who will determine preference rights of applicants.

8. Applicants who appear to have a preference right under the act of June 11, 1906, will be permitted to occupy so much of the land applied for by them as, in the opinion of the forest supervisor, is chiefly valuable for agriculture.

## OFFERING OF NATIONAL FOREST LANDS—PUBLICATION OF NOTICE.

## Notice to Publishers.

Department of the Interior,  
Washington, October 4, 1911.

The act of June 11, 1906 (34 Stat., 233), requires that the opening of national forest lands thereunder shall be advertised for not less than four weeks in one newspaper of general circulation published in the county in which the lands are situated, except where no newspaper is published in the county wherein the land is situated, in which case the opening should be advertised in the newspaper nearest the land.

Therefore, publishers, before commencing publication of notices under the above-designated act, should determine whether their paper is the proper one in which to make such publication; if not, they should immediately return the notice to the register of the local land office so that publication may be ordered in the proper county and paper.

Publishers are hereby notified that if by any mistake of Land Office officials, or for any other reason, notices above described should erroneously be sent to them and they should publish the same, no compensation will be allowed therefor.

Samuel Adams,  
First Assistant Secretary.



**INSTRUCTIONS RELATING TO HOMESTEAD ENTRIES ALLOWED IN  
CONFLICT WITH LANDS WITHDRAWN FOR FORESTRY PURPOSES  
—RIGHTS OF CONTESTANTS—ACT OF MARCH 3, 1911.**

Department of the Interior,  
General Land Office,  
Washington, April 6, 1911.

Registers and Receivers, United States Land Offices.

Gentlemen: Your attention is directed to the act of Congress approved March 3, 1911 (Public, No. 469), entitled "An Act providing for the validation of certain homestead entries," which reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all homestead entries which have been canceled or relinquished, or are invalid solely because of the erroneous allowance of such entries after the withdrawal of lands for national forest purposes, may be reinstated or allowed to remain intact, but in the case of entries heretofore canceled applications for reinstatement must be filed in the proper local land office prior to July first, nineteen hundred and twelve.

Sec. 2. That in all cases where contests were initiated under the provisions of the act of May fourteenth, eighteen hundred and eighty, prior to the withdrawal of the land for national forest purposes, the qualified successful contestants may exercise their preference right to enter the land within six months after the passage of this act.

1. Applications for the reinstatement of entries coming within the provisions of section 1 of the act must be filed in the proper local land office prior to July 1, 1912. Promptly upon the filing of such applications, you will forward the same to this office by special letter, making such recommendation in the premises as the facts may warrant, and a statement as to the status of the land involved. Each application should be accounted for on your appropriate schedule of serial numbers for the month in which the same was forwarded, showing the date of transmittal.

2. Section 2 has reference only to contests initiated prior to March 3, 1911, and prior to the withdrawal for national forest purposes of the lands involved. You will require applicants under said section to show their qualifications at the time their applications are presented.

3. You will notify the proper forest officer of all action taken by you under this act.

Very Respectfully,

Fred Dennett,  
Commissioner.

**MINERAL OR AGRICULTURAL CLAIMS WITHIN NATIONAL PARKS.**

Department of the Interior,  
General Land Office,  
Washington, D. C., January 10, 1911.

Registers and Receivers, United States Land Offices; Chiefs of Field Divisions; and Superintendents of National Parks:

Under date of November 12, 1910, the Secretary of the Interior advised this office, among other things, as follows:

It is desirable that in so far as it is possible the title to lands within the limits of National Parks should remain in the Government, so that the parks may be protected, developed, and controlled by the United States. In a number of parks, however, there are claims, mineral or agricultural, upon which possession is being maintained on the ground that the claims were initiated prior to the creation of the parks or the inhibition of further disposition or acquisition of lands therein.

Accordingly, in all cases of applications to make final proof, final entry, or to purchase public lands, under any public-land law, the register and receiver will, where any of said lands are within the limits of National Parks, at once forward a copy thereof to the Chief of Field Division of Special Agents. Such copy, as well as the original application, will be indorsed with the name of the National Park within which the said land, or any portion thereof, is situate. A second copy will also be forwarded to the Superintendent in charge of the National Park.

Valid entries may proceed up to and including the submission of final proof, but no purchase money will be received or final certificate of entry issued until further orders. The record of the entry should be forwarded with

your regular monthly returns, and will be held in this office until receipt of the report of the special agent and the superintendent of the park.

The Chief of Field Division, on receipt of such copy of notice, will make a case thereof on his docket, and will also make a field examination of the lands so sought to be entered, and submit a report thereof direct to this office.

Chiefs of Field Divisions and Superintendents will exert every effort to make the field examination prior to date for final proof.

Where the claim sought to be entered is upon unsurveyed lands the registers and receivers will carefully examine the plat and field notes of survey of such claim, and such other data as may be available, to ascertain the true locus thereof with respect to National Parks; and, if in any doubt as to whether or not the land sought to be purchased is within a National Park, they should call upon the Surveyor-General for a report in the premises.

The attention of local officers, chiefs of field divisions, and superintendents of National Parks, is called especially to the last sentence of the Secretary's order, which reads as follows:

"You will also, upon receipt of report or allegation from special agents or from others, that any locations or claims within National Parks, for which application for patent or entry have not been made, are invalid or are not being maintained as required by law, report such cases to this Department in order that appropriate instructions may be issued and action taken."

As will be observed, this relates to locations or claims, mineral or agricultural, within National Parks, for which no applications for patent or entry have been presented to the local officers. Under these instructions you need not await the presentation of an application for patent for these locations or claims prior to making any investigation or report to this office; but you will promptly, in all such cases as are by you, for any reason, deemed to be invalid (or reported to you as being invalid), submit your report and recommendations with respect thereto, in order that this office may at the earliest possible moment take such steps, through the Department, as may be appropriate and necessary to protect the interests of the Government in the premises.

Fred Dennett,  
Commissioner.

Approved January 10, 1911.

R. A. Ballinger,  
Secretary.

## **OIL, GAS AND PETROLEUM.**

(See United States Mining Law and Regulations thereunder  
page 375.)

Lands containing oil, gas and petroleum or other minerals may be entered and patented under the placer mining laws.

February 11, 1897, the following Act was approved:

"An Act to authorize the entry and patenting of lands containing petroleum, and other mineral oils, under the placer mining laws of the United States.

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that any person authorized to enter lands under the mining laws of the United States may enter and obtain a patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims; Provided, that lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed or improved as mineral, but not yet patented, may be held and patented under the provisions of this Act the same as if such filing, claim or improvement were subsequent to the date of the passage hereof." (See Circular February 25, 1897, 24 L. D., page 183.)

## **ASSESSMENT.**

The Act of February 12, 1903 (32 Stat., 825), provides:

"That where oil lands are located under the provisions of Title 32, Chapter 6, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all; Provided, that said labor will extend



to the development or to determine the oil-bearing character of such contiguous claims."

The Act approved March 2, 1911, Public No. 450, provides:

"That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all respects valid and regular, patent therefor, not exceeding 160 acres in any one claim, shall issue to the holder or holders thereof, as in other cases: Provided, however, that such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry." (36 Stat., 1015.)

### WITHDRAWALS AND EXPLORATION.

"An Act to authorize the President of the United States of America, withdrawals of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale or entry, any of the public lands of the United States, including the District of Alaska, and reserve the same for water power sites; irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as same apply to minerals other than coal, oil, gas and phosphates: Provided, that the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of such work; and Provided, further, that this act shall not be construed as a recognition, abridgement or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act: and Provided, further, that there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: and Provided, further, that hereafter no forest reserve shall be created nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado or Wyoming, except by Act of Congress.

Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals. Approved June 25, 1910."

(36 Stat., 647.)

Department of the Interior,  
Washington, March 6, 1911.

The Commissioner of the General Land Office.

Sir: The Act of June 25, 1910 (36 Stat., 847), provides that the President may at any time in his discretion temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification, or other public purposes, to be specified in the orders of withdrawal, such withdrawal to remain in force until revoked by him or by an Act of Congress.

Section two of the Act provides that lands so withdrawn shall at all times be open to exploration, discovery, occupancy and purchase under the mining laws, excepting those relating to coal, oil, gas, and phosphates, there

being a further provision, however, to the effect that the order of withdrawal shall not impair or affect the rights of any person who, prior to the date of the withdrawal, is a bona fide occupant or claimant of oil or gas-bearing lands, and who at such date is in diligent prosecution of work leading to the discovery of oil or gas. No hard or fast rule can be established fixing the amount of work which must have been done by the occupant prosecuting work leading to the discovery of oil or gas. Each case must rest upon its own showing of diligence when application for patent is filed.

The chief of field division should be advised of all such applications and should be prepared to submit showing, if possible, before the issuance of final certificate of entry.

This section contains further provision to the effect that there shall be excepted from the force and effect of any withdrawal all lands which are on the date of withdrawal embraced in any lawful homestead, or desert-land entry theretofore made or upon which any valid settlement has been made, and is at that time being maintained and perfected pursuant to law. Applications to make non-mineral entries by settlers claiming the benefits of the above-mentioned provisions of section two will be referred to the chief of the appropriate field division for investigation and report before final action is taken thereon.

Withdrawals provided for under this Act include those made for the purpose of classifying coal lands, and it seems that after the passage of this Act the previous coal withdrawals were renewed thereunder.

The Act of March 3, 1909 (35 Stat., 844), is for the protection of surface rights of non-mineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the Act of June 22, 1910 (36 Stat., 583), provides for the allowance of certain non-mineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain non-mineral entries, and it is not believed that the Act of June 25, 1910, under consideration was intended to repeal said acts. Therefore, where applications are presented to make final proof on non-mineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the Act of March 3, 1909, *supra*, and as to such lands certain non-mineral entries may be allowed, as provided for by the Act of June 22, 1910, *supra*, notwithstanding their withdrawal under Act of June 25, 1910.

Mineral applications for mining claims perfected upon oil, gas, or phosphate lands prior to withdrawal, or for such claims upon lands chiefly valuable for other minerals, whether perfected before or after withdrawal, or for claims of the latter class within power-site withdrawals, and applications to submit final proof upon homestead, desert-land, and settlement claims initiated prior to a withdrawal, will be referred to the chief of field division, with the appropriate notation of the character of the withdrawal involved, in accordance with the practice under paragraphs five, *et seq.*, of the circular of April 24, 1907, *supra*, for field examination and full report of all facts touching the character of the land and affecting the validity of the location, claim, or entry, as the case may be, including the possibility of water-power development, if any.

In the administration of the Act hereunder you will also be governed by the circular approved January 27, 1911, relative to co-operation between the Geological Survey and the General Land Office.

It is believed that the foregoing will enable you to properly advise the local officers in all matters necessary to put this Act into operation; and where an application is received not specifically provided for herein, you will act upon the same, affording aggrieved parties the usual right of appeal.

Very respectfully,

R. A. Ballinger,  
Secretary.

June 15, 1911, Circular No. 24 was issued by the Commissioner of the General Land Office to Registers and Receivers of United States Land Office and Chief of Field Division, in which it is said:

"The Secretary, in a communication to this office, dated May 17, 1911, instructed that the Act of March 2, 1911 (Public No. 450) should be brought to the attention of the local officers with the direction that, upon the presentation of their case within the purview of the Act, they shall

Advise the Chief of Field Division, in order that the latter may make



such field examinations as are advisable or necessary, particularly if the land involved has been embraced in a withdrawal, as to the time when the development work was taken, and be prepared to submit the results, if possible, before entry is allowed. Each case will be considered and adjudged upon its record in the regular manner.

Observing that the operation of the Act is retrospective only, being confined to locations made prior to the date thereof, you will, upon the presentation of any application for patent affected by the provision of said Act, immediately communicate to the proper Chief of Field Division due and full information thereof, to the end that he may procure to be made such investigation as may be necessary to ascertain the facts concerning the inception and subsequent prosecution of development operations, the extent of such works, and any other facts bearing upon and affecting the validity of the claim, including the continuousness and diligence with which development proceeded from the date of inception.

The report made of the results of such examination will be submitted to this office, upon receipt of which the local officers will be advised as to the action to be taken.

Very respectfully,

Fred Dennett,  
Commissioner."

No special regulations relative to non-mineral applications for lands later withdrawn or classified as oil, have been adopted by the Department, the procedure governing applications for lands subsequently classified or withdrawn as coal, adopted prior to the passage of the Acts of March 20, 1909, and June 22, 1910, permitting the issuance of surface patents should be followed in such cases, so far as applicable, and in case of the protest by a mineral claimant against such non-mineral application, charging the mineral character of the lands, the proceedings thereon should be in accordance with the rules of practice now in effect relative to contests. (See Rules of Practice, page 739.) *Kinkade vs. State of California* (39 L. D., 491).

#### LOCATION NOTICES.

The procedure in the matter of location of lands claimed for oil, gas or petroleum or oil minerals, is that followed in cases of location of placer mine, and is regulated by the mining laws and regulations thereunder and the statutes of the particular State or Territory in which the lands are situated.

It was said by the Department in the case of *Rupp v. Heirs of Healey et al.*, 38 L. D., p. 392.

#### DISCOVERY.

"Discovery is indispensable to the validity of a mining location, and necessarily must precede or be coincident with the perfection thereof. The ultimate right to a patent must always rest upon the basis of a lawful location; and if the assignment of discovery be drawn in question so as to involve the right of possession as between rival claimants, the land department can not ignore an alleged absence of discovery by the application for patent in time to have enabled a court of competent jurisdiction, pursuant to an adverse claim and suit, to determine respective rights of the parties."

"Where, however, by a protest it is charged that no discovery, within the limits of the claim, was made at or prior to the beginning of the period of notice of an application for patent, which, if true, would dispose the absence of a seasonable and essential basis for a judgment in favor of the applicant, or the adverse claimant, the land department will take jurisdiction to determine that question, to the end that, should the charge be sustained, the patent application will be dismissed, and the application remitted to the prosecution of patent proceedings anew in order that due opportunity may be given for the litigation of the controverted questions properly cognizable before the local courts in adverse proceedings." (Id. 387.)

"A corporation, regardless of the number of its stockholders, may lawfully locate no greater placer area under the mining laws than is allowable in the case of a single, natural person, viz.: 20 acres." (Igo Bridge Extension Placer, 38 L. D., 281.)

"A placer location for 160 acres, made by eight persons and subsequently transferred to another individual, invalid because not preceded by discovery, cannot be perfected by the transferee upon a subsequent discovery." (H. H. Yard et al., 38 L. D., 59.)

"A placer location of oil lands for 160 acres made by eight persons and subsequently transferred to a single individual is invalid because not preceded by discovery, cannot be perfected by the transferee upon a subsequent discovery to the full area so located but only as to 20 acres thereof."

"Discovery of mineral is an essential prerequisite to the initiation of title under the mining laws. While discovery of mineral subsequent to location of a mining claim is sometimes held by the Land Department to relate back to the date of location, where there was no precedent discovery, the doctrine of relation cannot be invoked to the disadvantage of intervening adverse claims, nor to permit anyone to secure more land by indirect means than may be done directly." (Bakersfield Fuel & Oil Co., 39 L. D., 460.)

"A small seepage of oil upon the surface of a spring of water, and a slight flow of natural gas, insufficient for commercial purposes and without value, from a drilled well which failed to develop oil, are not sufficient to constitute a discovery of oil as a basis for a placer mining location under the Act of February 11, 1897."

Butte Oil Company, 40 L. D., 602.

"The disclosure of a stratum of bituminous sandstone or shale from which a small quantity of oil seeps, nor sufficient to impress the land with any value for mining purposes, does not constitute a sufficient discovery to support a valid mining location."

Southwestern Oil Co, v. Atlantic & Pacific R. R. Co., 39 L. D., 335.

### **IMPROVEMENTS.**

Where a placer claim or group of claims held in common (25) contains deposits of such character and extent that they can be most economically worked by means of a mining dredge, and the owner of such claim or group has in good faith purchased and actually placed in good working order thereon, a dredge, for the exclusive purpose of working such deposits, which dredge has not theretofore been used as the basis for patent for any other area, it is entitled to be regarded as a mining improvement, so far as that particular claim or group is concerned, and to have its cost accredited thereto. (Garden Gulch Bar Placer, 38 L. D., 28.)

### **MAXIMUM QUANTITY BY SEVERAL PERSONS.**

"A placer mining location made by several persons for a maximum quantity of land that may lawfully be entered in a single location by that number of persons, cannot be amended to include a larger area." (Garden Gulch Bar Placer, 38 L. D., 28.)

### **OWNER OF PLACER.**

"The owner of two or more contiguous placer mining locations cannot, under the guise of amending one of them, substitute therefor a single location." (Garden Gulch Bar Placer, 38 L. D., 28.)

Section 2331 of the Revised Statutes limits the acreage to be included in an individual placer claim to twenty acres. The word "claimant" is construed to mean locator. (Garden Gulch Bar Placer, 38 L. D., 31.)

"A corporation, regardless of the number of its stockholders, may lawfully locate no greater placer area under the mining laws than is allowable in the case of a single natural person, namely, 20 acres."

### **LOCATION AND NATIONAL FORESTS.**

"The land department has followed, throughout, of its own motion, or at the instance of others, to inquire into and determine whether mining locations within national forests were preceded by the requisite discovery of mineral,



and whether the lands are of the character subject to occupation and purchase under the mining laws, notwithstanding the locator has applied for patent; and if the locations be found to be invalid the lands covered thereby will be administered as part of the public domain, subject to the reservation for forest purposes, without regard to the locations." (H. H. Yard, 38 L. D., 59.)

"A corporation in acquiring title under the public land laws must be regarded as an entity, with no greater right than an individual." (Bakersfield Fuel & Oil Co., 39 L. D., 460.)

(See Mineral or Agricultural Claims within National Forests.)

### DISCOVERY.

"No title is acquired under or by virtue of a school indemnity selection until the same has been duly approved and served, and prior thereto a disclosure that the land is mineral will defeat the selection." (Kinkade v. State of California, 39 L. D., 491.)

The regulations of June 23, 1910, concerning the selection of lands by the State, the last paragraph, Section 11, provides—

"Where lands sought to be selected are alleged by way of protest, to be mineral, or where applications for patent therefor are presented under the mining laws, or are other adversely claimed, proceedings in such cases will be in the nature of a contest and will be governed by the rules of practice in force in such cases." (39 L. D., 41.)

Pipe Line (See Right of Way, Canal, Ditches, and Reservoirs.)

Attorneys cannot take acknowledgments in matters concerning applications and proofs.

(El Paso Brick Co., 37 L. D., 155, overruled in so far as the same may conflict.)

Stock Oil Co., 40 L. D., 198.

[In reply please refer to Circular No. 24.]

### OIL LOCATIONS MADE PRIOR TO MARCH 2, 1911.

Department of the Interior,  
General Land Office,  
Washington, June 15, 1911.

Registers and Receivers, United States Land Offices,  
and Chiefs of Field Division.

Sirs: The Secretary in a communication to this office dated May 17, 1911, instructed that the Act of March 2, 1911 (Public, No. 450), should be brought to the attention of the local officers with the direction that, upon the presentation of every case within the purview of the Act, they shall—

"Advise the chiefs of field division, in order that the latter may make such field examinations as are advisable or necessary, particularly if the land involved has been embraced in a withdrawal, as to the time when the development work was begun, and be prepared to submit the results, if possible, before entry is allowed. Each such case will be considered and adjudicated upon its record in the regular manner."

Observing that the operation of the act is retrospective only, being confined to locations made prior to the date thereof, you will, upon the presentation of any application for patent affected by the provisions of said Act, immediately communicate to the proper chief of field division due and full information thereof, to the end that he may procure to be made such investigations as may be necessary to ascertain the facts concerning the inception and subsequent prosecution of development operations, the extent and character of such works, and any other facts bearing upon and affecting the validity of the claim, including the continuousness and diligence with which development proceeded from the date of inception.

Report made of the results of such examinations will be submitted to this office, upon receipt of which the local officers will be advised as to the action to be taken.

Very respectfully,

Fred Dennett,  
Commissioner.

## WITHDRAWALS.

**Temporary, by President for Water-Power Sites, Irrigation, Classification—Rights of Miners Excepted—Claimants of Oil and Gas Lands—Must Be Reported to Congress—No New Forest Reserves in Certain States.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: And provided further, That this Act shall not be construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon any oil or gas-bearing lands after any withdrawal of such lands made prior to the passage of this Act: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made; And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress.

Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

(Public No. 303, Approved June 25, 1910.)

## LAND PATENTS.

All patents issuing from the General Land Office are issued in the name of the United States, are signed by the President, and countersigned by the recorder of the General Land Office, and are recorded in the office in books kept for the purpose. (Sec. 458, Rev. Stat.)

Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his



death before making proof, to the statutory successor making the proof, as provided by law.

The recitals and description of land in patents will in all cases follow the register's certificate of entry or location, as prescribed by law.

When patents are ready for delivery, they will in all cases be transmitted to the local office at which the location or entry was made, where they can be obtained by the party entitled thereto, upon surrender of the duplicate receipt, or certificate, as the case may be, unless the duplicate shall have been previously filed in this office with a request that the patent be delivered as requested by the person sending the same; and in no case will the patent be delivered, either from this or the local office, except upon receipt of such duplicate, or, in case of its loss from any cause, upon the filing in lieu of the same of an affidavit made by the present owner of the land, accounting for the loss of the same, and also showing ownership of the tracts or a portion thereof embraced in the patent.

It is provided in Section 8 of the Act of March 3, 1891 (26 Stat. L., 1093), that suits by the United States to vacate and annul any patent previously issued shall be brought within five years from the passage of said Act, and suits to vacate and annul patents thereafter issued shall only be brought within six years after the date of the issue of such patents.

By Act of March 2, 1896 (29 Stat., 42), the time within which such suits might be brought, so far as regards patents issued under a railroad or wagon road grant, was extended so as to admit of bringing suit in such cases within five years from the passage of the Act in cases of patents issued prior thereto, and in cases of patents issued thereafter within six years after the date of the issuance of the patents, with a provision protecting the titles of bona fide purchasers of such lands.

With reference to furnishing certified copies of patents—

## **THE RECLAMATION OF ARID LANDS BY THE UNITED STATES.**

- A. An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.
- B. An Act authorizing the use of earth, stone, and timber on the public lands and forest reserves of the United States in the construction of works under the national irrigation law.
- C. An Act to provide for the covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund.
- D. An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes.
- E. An Act to extend the irrigation act to the State of Texas.
- F. An Act providing for the subdivision of lands under the reclamation act, and for other purposes.
- G. An Act providing for the reappraisal of unsold lots in the town sites on reclamation projects, and for other purposes.
- II. An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead act.
- I. An Act to authorize advances to the "reclamation fund," and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes.
- J. An Act granting leaves of absence to homesteaders on lands to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two.
- K. An Act to provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purposes of that act.
- L. An Act to authorize the Secretary of the Interior to withdraw public notices issued under Section four of the reclamation act, and for other purposes.
- M. An Act to amend Section five of the Act of Congress of June twenty-fifth, nineteen hundred and ten, entitled "An Act to authorize advances to

- the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes."
- N. An Act to authorize the Government to contract for impounding, storing, and carriage of water, and to co-operate in the construction of reservoirs and canals under reclamation projects, and for other purposes.
  - O. An Act to amend an Act entitled "An Act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six.
  - P. Special acts.

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- 3. Allowing settlement and entry on reserved lands.
- 4. Entry only permitted after relinquishment of former entry.
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- 6. Indorsement of homestead application.
- 7. Entries not subject to commutation.
- 8. Withdrawals and restorations; withdrawals for surveys and investigations.
- 9. Two classes of withdrawals.
- 10. Lands withdrawn under first form.
- 11. Lands withdrawn under second form.
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- 14. Date of effect for withdrawals.
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- 17. Lands needed in construction and maintenance of irrigation works.
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- 19. Owners of improvements.
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- 21. Additional entries, by whom made.
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- 50. Irregular final proof; right of appeal.
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- 119. Circular No. 110, special instructions relative to assignment of reclamation homestead entries.
- 120. Mortgages.
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[Circular No. 102.]

(Approved April 29, 1912. Former Circular, May 31, 1910.)

## **LAWS AND REGULATIONS RELATING TO THE RECLAMATION OF ARID LANDS BY THE UNITED STATES.**

Department of the Interior,  
General Land Office,  
Washington, D. C., April 29, 1912.

### **STATUTES.**

#### **General Acts.**

- (A) An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June thirtieth, nineteen hundred and one, including the surplus of fees and commissions in excess of allowances to Registers and Receivers, and excepting the five per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenditures provided for in this Act: Provided, That in case the receipts from the sale and disposal of public lands other than those realized from the sale and disposal of lands referred to in this section are insufficient to meet the requirements for the support of agricultural colleges in the several States and Territories, under the Act of August thirtieth, eighteen hundred and ninety, entitled "An Act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two," the deficiency, if any, in the sum necessary for the support of the said colleges shall be provided for from any moneys in the Treasury not otherwise appropriated.

Sec. 2. That the Secretary of the Interior is hereby authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage,



diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed.

Sec. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section four of this Act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this Act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: Provided, That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this Act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon restore said land to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: Provided, That the commutation provisions of the homestead laws shall not apply to entries made under this Act.

Sec. 4. That upon the determination by the Secretary of the Interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably: Provided, That in all construction work eight hours shall constitute a day's work, and no Mongolian labor shall be employed thereon.

Sec. 5. That the entryman upon lands to be irrigated by such works shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay to the Government the charges apportioned against such tract, as provided in section four. No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident of such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. The annual installments shall be paid to the Receiver of the local land office of the district in which the land is situated, and a failure to make any two payments when due shall render the entry subject to cancellation, with the forfeiture of all rights under this Act, as well as of any moneys already paid thereon. All moneys received from the above sources shall be paid into the reclamation fund. Registers and Receivers shall be allowed the usual commissions on all moneys paid for lands entered under this act.

Sec. 6. That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this Act: Provided, That when the payments required by this Act are made for the major portions of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: Provided, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

Sec. 7. That where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the Secretary of the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the Attorney-General of the United States upon every application of the Secretary of the Interior, under this Act, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice.

Sec. 8. That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right to the use of



water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

Sec. 9.\* That it is hereby declared to be the duty of the Secretary of the Interior in carrying out the provisions of this Act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such State or Territory: Provided, That the Secretary may temporarily use such portion of said funds for the benefit of arid or semiarid lands in any particular State or Territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event, within each ten-year period after the passage of this Act, the expenditures for the benefit of the said States and Territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility aforesaid.

Sec. 10. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect.

Approved, June 17, 1902 (32 Stat., 388).

(B) An Act authorizing the use of earth, stone, and timber on the public lands and forest reserves of the United States in the construction of works under the national irrigation law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in carrying out the provisions of the national irrigation law, approved June seventeenth, nineteen hundred and two, and in constructing works thereunder, the Secretary of the Interior is hereby authorized to use and to permit the use by those engaged in the construction of works under said law, under rules and regulations to be prescribed by him, such earth, stone, and timber from the public lands of the United States as may be required in the construction of such works, and the Secretary of Agriculture is hereby authorized to permit the use of earth, stone, and timber from the forest reserves of the United States for the same purpose, under rules and regulations to be prescribed by him.

Approved February 8, 1905 (33 Stat., 706).

(C) An Act to provide for the covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be covered into the reclamation fund established under the Act of June seventeenth, nineteen hundred and two, known as the reclamation Act, the proceeds of the sales of material utilized for temporary work and structures in connection with the operations under the said Act, as well as of the sales of all other condemned property which had been purchased under the provisions thereof, and also

\* Sec. 9 of this act repealed by Act of June 25, 1910.

any moneys refunded in connection with the operations under said reclamation act.

Approved, March 3, 1905 (33 Stat., 1032).

-(D) An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the reclamation act of June seventeenth nineteen hundred and two, and for other purposes. Approved April 16, 1906 (34 Stat., 116). See page 358.

(E) An Act to extend the irrigation act to the State of Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, be, and the same are hereby, extended so as to include and apply to the State of Texas.

Approved June 12, 1906 (34 Stat., 259).

(F) An Act providing for the subdivision of lands under the reclamation act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever in the opinion of the Secretary of the Interior, by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family on lands to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two, known as the Reclamation Act, he may fix a lesser area than forty acres as the minimum entry and may establish farm units of not less than ten nor more than one hundred and sixty acres. That whenever it may be necessary, for the purpose of accurate description, to further subdivide lands to be irrigated under the provisions of said Reclamation Act, the Secretary of the Interior may cause subdivision surveys to be made by the officers of the Reclamation Service, which subdivisions shall be rectangular in form, except in cases where irregular subdivisions may be necessary in order to provide for practicable and economical irrigation. Such subdivisions surveys shall be noted upon the tract books in the General Land Office, and they shall be paid for from the reclamation fund: Provided, That an entryman may elect to enter said Reclamation Act a lesser area than the minimum limit in any State or Territory.

Sec. 2. That wherever the Secretary of the Interior, in carrying out the provisions of the Reclamation Act, shall acquire by relinquishment lands covered by a bona fide unperfected entry under the land laws of the United States, the entryman upon such tract may make another and additional entry, as though the entry thus relinquished had not been made.

Sec. 3. That any townsite heretofore set apart or established by proclamation of the President, under the provisions of sections twenty-three hundred and eighty and twenty-three hundred and eighty-one of the Revised Statutes of the United States, within or in the vicinity of any reclamation project, may be appraised and disposed of in accordance with the provisions of the Act of Con-



gress approved April sixteenth, nineteen hundred and six, entitled "An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the Reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes;" and all necessary expenses incurred in the appraisal and sale of lands embraced within any such townsite shall be paid from the reclamation fund, and the proceeds of the sales of such lands shall be covered into the reclamation fund.

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Sec. 5. That where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and the desert-land entryman has been or may be directly or indirectly hindered, delayed, or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry: Provided, That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert-land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been filed; but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry, the entryman shall thereupon comply with all the provisions of the aforesaid Act of June seventeenth, nineteen hundred and two, and shall relinquish all land embraced within his desert-land entry in excess of one hundred and sixty acres, and as to such one hundred and sixty acres retained, he shall be entitled to make final proof and obtain patent upon compliance with the terms of payment prescribed in said Act of June seventeenth, nineteenth hundred and two, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said Reclamation Act.

Approved, June 27, 1906 (34 Stat., 519).

(G) An Act providing for the reappraisement of unsold lots in the townsites on reclamation projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, whenever he may deem it necessary, to reappraise all unsold lots within town sites on pro-

jects under the reclamation Act heretofore or hereafter appraised under the provisions of the Act approved April sixteenth, nineteen hundred and six, entitled "An Act providing for the withdrawal from public entry of lands needed for town site purposes in connection with irrigation projects under the Reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes," and the Act approved June twenty-seventh, nineteen hundred and six, entitled "An Act providing for the subdivision of lands entered under the Reclamation Act, and for other purposes;" and thereafter to proceed with the sale of such town lots in accordance with such Acts.

Sec. 2. That in the sale of town lots under the provisions of the said Acts of April sixteenth and June twenty-seventh, nineteen hundred and six, the Secretary of the Interior may, in his discretion, require payment for such town lots in full at time of sale or in annual installments, not exceeding five, with interest at the rate of six per centum per annum on deferred payments.

Approved, June 11, 1910 (36 Stat., 465).

(H) An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have, or shall make, homestead entries within reclamation projects under the provisions of the Act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said Act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: Provided, That all assignments made under the provisions of this Act shall be subject to the limitations, charges, terms, and conditions of the Reclamation Act.

Approved, June 23, 1910 (36 Stat., 592).

(I) An Act to authorize advances to the "reclamation fund," and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the Secretary of the Interior to complete Government reclamation projects heretofore begun, the Secretary of the Treasury is authorized, upon request of the Secretary of the Interior, to transfer from time to time to the credit of the reclamation fund created by the the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, such sum or sums, not exceeding in the aggregate twenty million dollars, as the Secretary of the Interior may deem necessary to



complete the said reclamation projects, and such extensions thereof as he may deem proper and necessary to the successful and profitable operation and maintenance thereof or to protect water rights pertaining thereto claimed by the United States, provided the same shall be approved by the President of the United States; and such sum or sums as may be required to comply with the foregoing authority are hereby appropriated out of any money in the Treasury not otherwise appropriated: Provided, That the sums hereby authorized to be transferred to the reclamation fund shall be so transferred only as such sums shall be actually needed to meet payments for work performed under existing law: And provided further, That all sums so transferred shall be reimbursed to the Treasury from the reclamation fund, as hereinafter provided: And provided further, That no part of this appropriation shall be expended upon any existing project until it shall have been examined and reported upon by a board of engineer officers of the Army, designated by the President of the United States, and until it shall be approved by the President as feasible and practicable and worthy of such expenditure; nor shall any portion of this appropriation be expended upon any new project.

Sec. 2. That for the purpose of providing the Treasury with funds for such advances to the reclamation fund, the Secretary of the Treasury is authorized to issue certificates of indebtedness of the United States in such form as he may prescribe and in denominations of fifty dollars, or multiples of that sum; said certificates to be redeemable at the option of the United States at any time after three years from the date of their issue and to be payable five years after such date, and to bear interest, payable semiannually, at not exceeding three per centum per annum; that principal and interest to be payable in gold coin of the United States. The certificates of indebtedness herein authorized may be disposed of by the Secretary of the Treasury at not less than par, under such rules and regulations as he may prescribe, giving all citizens of the United States an equal opportunity to subscribe therefor, but no commission shall be allowed and the aggregate issue of such certificates shall not exceed the amount of all advances made to said reclamation fund, and in no event shall the same exceed the sum of twenty million dollars. The certificates of indebtedness herein authorized shall be exempt from taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority; and a sum not exceeding one-tenth of one per centum of the amount of the certificates of indebtedness issued under this Act is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing advertising, and issuing the same.

Sec. 3. That beginning five years after the date of the first advance to the reclamation fund under this Act, fifty per centum of the annual receipts of the reclamation fund shall be paid into the general fund of the Treasury of the United States until payment so made shall equal the aggregate amount of advances made by the Treasury to said reclamation fund, together with interest paid on the certificates of indebtedness issued under this Act and any expense incident to preparing, advertising, and issuing the same.

Sec. 4. That all money placed to the credit of the reclamation fund in pursuance of this Act shall be devoted exclusively to the completion of work on reclamation projects heretofore begun as hereinbefore provided, and the same shall be included with all other expenses in future estimates of construction, operation, or maintenance, and hereafter no irrigation project contemplated by said Act of June seventeenth, nineteen hundred and two, shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States.

"Sec. 5. That no entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and make public announcement of the same: Provided, That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by an Act entitled 'An Act appropriating the receipts from the sale and disposal of the public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,' approved June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight)."

(Public No. 386, Approved, February 18, 1911.)

Sec. 6. That section nine of said Act of Congress, approved June seventeenth, nineteen hundred and two, entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," is hereby repealed.

Approved, June 25, 1910 (36 Stat., 835).

- (I) An Act granting leaves of absence to homesteaders on lands to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all qualified entrymen who have heretofore made bona fide entry upon lands proposed to be irrigated under the provisions of the Act of June seventeenth, nineteen hundred and two, known as the National Irrigation Act, may, upon application and a showing that they have made substantial improvements, and that water is not available for the irrigation of their said lands, within the discretion of the Secretary of the Interior, obtain leave of absence from their entries until water for irrigation is turned into the main irrigation canals from which the land is to be irrigated: Provided, That the period of actual absence under this Act shall not be deducted from the full time of residence required by law.

Approved June 25, 1910 (36 Stat., 864).

- (K) An Act to provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purposes of that act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when-



ever in the opinion of the Secretary of the Interior any lands which have been acquired under the provisions of the Act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), commonly called the "Reclamation Act," or under the provisions of any Act amendatory thereof or supplemental thereto, for any irrigation works contemplated by said Reclamation Act are not needed for the purposes for which they were acquired, said Secretary of the Interior may cause said lands, together with the improvements thereon, to be appraised by three disinterested persons, to be appointed by him, and thereafter to sell the same for not less than the appraised value at public auction to the highest bidder, after giving public notice of the time and place of sale by posting upon the land and by publication for not less than thirty days in a newspaper of general circulation in the vicinity of the land.

Sec. 2. That upon payment of the purchase price, the Secretary of the Interior is authorized by appropriate deed to convey all the right, title, and interest of the United States of, in, and to said lands to the purchaser of said sale, subject, however, to such reservations, limitations, or conditions as said Secretary may deem proper: Provided, That not over one hundred and sixty acres shall be sold to any one person.

Sec. 3. That the moneys derived from the sale of such lands shall be covered into the reclamation fund and be placed to the credit of the project for which such lands had been acquired.

Approved, February 2, 1911 (36 Stat., 895).

(L) An Act to authorize the Secretary of the Interior to withdraw public notices issued under section four of the reclamation act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior may, in his discretion, withdraw any public notice heretofore issued under section four of the Reclamation Act of June seventeenth, nineteen hundred and two, and he may agree to such modification of water-right applications heretofore duly filed or contracts with water users' associations and others, entered into prior to the passage of this Act, as he may deem advisable, or he may consent to the abrogation of such water-right applications and contracts, and proceed in all respects as if no such notice had been given.

Approved, February 13, 1911 (36 Stat., 902).

(M) An Act to amend section five of the Act of Congress of June twenty-fifth, nineteen hundred and ten, entitled "An Act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of an Act entitled "An Act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes," approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and thirty-five), be, and the same hereby is, amended as follows:

"Sec. 5. That no entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and make public announcement of the same: Provided, That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by an Act entitled 'An Act appropriating the receipts from the sale and disposal of the public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,' approved June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight)." Approved, February 18, 1911 (36 Stat., 917).

(N) An Act to authorize the Government to contract for impounding, storing, and carriage of water, and to co-operate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under the Act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: Provided, however, That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual as herein provided, the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the Government project. No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of car-

Sec. 2. That in carrying out the provisions of said Reclamation Act and Acts amendatory thereof or supplementary thereto, the Secretary of the Interior is authorized, upon such terms as may riage and delivery of such water through their works.



be agreed upon, to cooperate with irrigation districts, water users, associations, corporations, entrymen or water users for the construction or use of such reservoirs, canals, or ditches as may be advantageously used by the Government and irrigation districts, water users associations, corporations, entrymen or water users for impounding, delivering and carrying water for irrigation purposes: Provided, That the title to and management of the works so constructed shall be subject to the provisions of section six of said Act: Provided further, That water shall not be furnished from any such reservoir or delivered through any such canal or ditch to any one landowner in excess of an amount sufficient to irrigate one hundred and sixty acres: Provided, That nothing contained in this Act shall be held or construed as enlarging or attempting to enlarge the right of the United States, under existing law, to control the waters of any stream in any State.

Sec. 3. That the moneys received in pursuance of such contracts shall be covered into the reclamation fund and be available for use under the terms of the Reclamation Act and the Acts amendatory thereof or supplementary thereto.

Approved, February 21, 1911 (36 Stat., 925).

- (O) An Act to amend an act entitled "An Act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of an Act entitled "An Act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the Reclamation Act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six, be amended so as to read as follows:

"Sec. 5. That whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said Reclamation Act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the money derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: Provided, That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project: Provided further, That the Secretary of the Interior is authorized, in his discretion, to make such a lease in connection with Rio Grande project in Texas and New Mexico for a longer period not exceeding fifty years, with the approval of the water users' association or associations under any such project, organized in conformity with the rules and regulations prescribed by the Secretary of the Interior in pursuance of section six of the Reclamation Act approved June seventeenth, nineteen hundred and two."

Approved, February 24, 1911 (36 Stat., 931).

**(P) Special Acts.**

The Act of April 23, 1904 (33 Stat., 302), as amended by section 15 of the Act of May 29, 1908 (35 Stat., 448), provides for the disposition and irrigation of lands within the limits of the Flathead Indian Reservation, Mont.

Section 25 of the Act approved April 21, 1904 (33 Stat., 224), provides for the reclamation, allotment, and disposal of surplus irrigable lands in the Yuma and Colorado River Indian Reservations in California and Arizona.

Section 26 of the Act of April 21, 1904, *supra*, provides for the reclamation, allotment, and disposal of surplus irrigable lands in the Pyramid Lake Indian Reservation, Nev.

The Act of March 27, 1904 (33 Stat., 357), authorizes the reclamation and disposition of irrigable lands in the ceded Crow Indian Reservation, in Montana.

Section 12 of the Act of March 22, 1906 (34 Stat., 80), provides for the disposition, under the Reclamation Act, of lands in the diminished Colville Indian Reservation, Wash.

The Act of June 9, 1906 (34 Stat., 228), authorizes the disposition of lands in the abandoned Fort Shaw Military Reservation, Mont., under the Reclamation Act.

The Act of March 6, 1906 (34 Stat., 53), authorizes the reclamation and disposal of surplus irrigable lands in the Yakima Indian Reservation, Wash.

The Act of June 21, 1906 (34 Stat., 327), authorizes the sale of allotted Indian lands on reclamation projects, and the Act of March 3, 1909 (35 Stat., 782), authorizes the Secretary of the Interior to make allotments of such lands in such areas as he may deem proper, not exceeding the amount therein named.

The Act of March 1, 1907 (34 Stat., 1037), provides for the disposition of irrigable lands in the Blackfeet Indian Reservation, Mont.

The Act of April 30, 1908 (35 Stat., 85), provides for the irrigation of Indian lands.

Sections 1 and 10 of the Act of Congress approved May 30, 1908, provide for the reclamation of lands on the Fort Peck Indian Reservation, Mont.

Section 1 of the Act of June 22, 1910 (36 Stat., 583), authorizes the withdrawal and reclamation of classified coal land, patents for such lands to reserve to the United States the coal deposits therein.

An Act February 2, 1911 (Public, 338), land acquired by Government not needed to be appraised and sold at auction, not over 160 acres to each person.

Surplus power to be leased for 10 years, preference for municipal purposes, 50 years on Rio Grande Project. Approved, February 27, 1911 (Public, 417).

Secretary of the Interior authorized to contract with individuals, corporations, for supplying water storage, constructing reservoirs, canals, etc. Approved, February 21 1911 (Public, 406).

**REGULATIONS.****General Information.**

1. Section 3 of the Act of June 17, 1902 (32 Stat., 388), provides for the withdrawal of lands from all disposition other than



that provided for by said Act. Lands withdrawn as susceptible of irrigation (usually referred to as withdrawn under the second form) are subject to entry under the provisions of the homestead law only, and since the passage of the Act of June 25, 1910 (36 Stats., 835), are open to settlement or entry only when approved farm unit plats have been filed and public notice has been issued in connection therewith, fixing the water charges and the date when water can be applied, except as provided by the Act of February 18, 1911 (36 Stat., 917). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law.

2. Under the provisions of the Act of February 18, 1911 (36 Stat., 917), the prohibition contained in section 5 of the Act of Congress approved June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm unit plats and the issuance of public notice fixing the water charges and the date when water can be applied, is withdrawn and set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

3. Settlement and entry on such lands will be allowed subject to the provisions of the homestead law and the Reclamation Act of June 17, 1902, *supra*, in the same manner as for other lands subject to entry within reclamation projects. The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present Act in cases where a relinquishment of the former entry has been or shall be filed. Registers and Receivers in their action on applications to make homestead entry under the provisions of this Act will be governed by the records of their office, and will note on all entries allowed hereunder the homestead number and date of the relinquishment entry, and the fact that the new entry is allowed subject to the provisions of the Act of February 18, 1911.

4. Entry under this Act is permitted only after relinquishment of an entry made prior to June 25, 1910, and therefore the relinquishment of an entry made under this Act, even though it covers lands which were the subject of another entry made prior to June 25, 1910, would not permit a third entry to be made. Lands entered under this Act will be held subject to the prohibition contained in section 5 of the Act of June 25, 1910, upon the relinquishment of an entry made under the Act of February 18, 1911.

5. Homestead entries of lands shown on the farm unit plats are made in practically the same manner as the usual homestead entry, but they are subject to all the provisions, limitations, charges, terms, and conditions of the Reclamation Act.

6. Registers and Receivers will indorse across the face of each homestead application, when allowed under the Reclamation Act, the following: "This entry allowed subject to the provisions of the Act of June 17, 1902 (32 Stat., 388);" and will advise each entryman of the provisions of the Act by furnishing him with a copy of this circular.

7. These entries are not subject to the commutation provisions

of the homestead law, and on the determination by the Secretary of the Interior that the proposed irrigation project is practicable, the entries hitherto made and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas. The farm units may be as small as 10 acres where the lands are suitable for fruit raising, etc., but on most projects, so far, they have been fixed at from 40 to 80 acres each. These areas are announced on farm unit plats, and public notice stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior, shortly before the Government is ready to furnish water. Until this public notice is issued it will be impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice; but Registers and Receivers will, upon inquiry, give all general information relative to the public lands included in reclamation projects, and will keep the engineers of the Reclamation Service fully informed, by correspondence, as to conditions affecting the same.

#### Withdrawals and Restorations.

8. The withdrawal of these lands at first is principally for the purpose of making surveys and irrigation investigations in order to determine the feasibility of the plans of irrigation and reclamation proposed. Only a portion of the lands will be irrigated even if the project is feasible, but it will be impossible to decide in advance of careful examination what lands may be watered, if any, and the mere fact that surveys are in progress is no indication whatever that the works will be built. It can not be determined how much water there may be available, or what lands can be covered, or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed.

9. There are two classes of withdrawals authorized by the act: One commonly known as "Withdrawals under the first form," which embraces lands that may possibly be needed in the construction and maintenance of irrigation works, and the other commonly known as "Withdrawals under the second form," which embraces lands not supposed to be needed in the actual construction and maintenance of irrigation works, but which may possibly be irrigated from such works.

10. After lands have been withdrawn under the first form they can not be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations should be rejected and denied, regardless of whether they were presented before or after the date of such withdrawal. (See John J. Maney, 35 L. D., 250.)

11. Lands withdrawn under the second form and subject to entry can be entered only under the homestead laws and subject to the provisions, limitations, charges, terms, and conditions of the Reclamation Act, and all applications to make selections, locations, or entries of any other kind on such lands should be rejected, regardless of whether they are presented before or after the lands



are withdrawn, except that where settlement rights were acquired prior to the withdrawal and have been diligently prosecuted and the homestead law fully complied with, the settler will be entitled to make and complete his entry as if it had been made before the withdrawal. (See Wm. Boyle, 38 L. D., 603.)

12. Withdrawals made under either of these forms do not defeat or adversely affect any valid entry, location or selection which segregated and withheld the lands embraced therein from other forms of appropriation at the date of such withdrawal; and all entries, selections, or locations of that character should be permitted to proceed to patent or certification upon due proof of compliance with the law in the same manner and to the same extent to which they would have proceeded had such withdrawal not been made, except as to lands needed for construction purposes. All lands, however, taken up under any of the land laws of the United States subsequent to October 2, 1888, are subject to right of way for ditches or canals constructed by authority of the United States (Act of August 30, 1890, 26 Stat., 391; circular approved by Department July 25, 1903). All entries made upon the lands referred to are subject to the following proviso of the Act cited:

That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this Act west of the one hundredth meridian it shall be expressed that there is reserved from lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

13. Should a homestead entry embrace land that is needed in whole or in part for purposes contemplated by said proviso the land would be taken for such purpose, and the entryman would have no claim against the United States for the same.

14. All withdrawals become effective on the date upon which they are ordered by the Secretary of the Interior, and all orders for restorations on the date they are received in the local land office unless otherwise specified in the order. (George B. Pratt et al., 38 L. D., 146.)

15. Upon the cancellation of a homestead entry covering lands embraced within a withdrawal under the Reclamation Act such withdrawal becomes effective as to such lands without further order. (See Cornelius J. MacNamara, 33 L. D., 520.)

16. Where the Secretary of the Interior by the approval of farm-unit plats has determined, or may determine, that the lands designated thereon are irrigable, the filing of such plats in the General Land Office and in the local land offices is to be regarded as equivalent to an order withdrawing such lands under the second form, and as an order changing to the second form any withdrawals of the first form then effective as to any such tracts. This applies to all areas shown on the farm-unit plats as subject to entry under the provisions of the Reclamation Act or as subject to the filing of water-right applications. Upon receipt of such plats appropriate notations of the change of form of withdrawals are to be made in accordance therewith upon the records of the General Land Office and of the local land offices.

In the event any lands embraced in any entry on which final proof has not been offered, or in any unapproved or uncertified selection, are needed in the construction and maintenance of any

irrigation works (other than for right of way for ditches or canals reserved under Act of Aug. 30, 1890) under the Reclamation Act, the Government may cancel such entry or selection and appropriate the lands embraced therein to such use, after paying the value of the improvements thereon and the enhanced value of such lands caused by such improvements.

18. Uncompleted claims to lands withdrawn under the provisions of the Reclamation Act and determined to be needed for construction of irrigation works in connection with a project that has been found practicable should not be allowed to be perfected, but should remain in the same status as existed at the time the determination was made, and the rights of the claimants adjusted upon the basis of that status. (Opinion of Asst. Atty. General, 34 L. D., 421.)

19. Where the owners of the improvements mentioned in paragraph 17 shall fail to agree with the representative of the Government as to the amount to be paid therefor, the same shall be acquired by condemnation proceedings under judicial process, as provided by section 7 of the Reclamation Act.

20. Inasmuch as every entry within the limits of a withdrawal under the Reclamation Act is subject to conformation to an established farm unit, improvements placed upon the different subdivisions by the entryman prior to such conformation are at his risk. (Jerome M. Higman, 37 L. D., 718.) They should be confined to one legal subdivision until the entry is conformed. In readjusting such an entry the Secretary is not required to confine the farm unit to the limits of the entry, but may combine any legal subdivision thereof with a contiguous tract lying outside of the entry so as to equalize in value the several farm units. (Idem.) The Act of June 27, 1906, supra, authorizes the Secretary of the Interior to fix a lesser area than 40 acres as a farm unit when, "by reason of market conditions and special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family" or when necessary "in order to provide for practical and economical irrigation."

#### **Additional Entries.**

21. A person who has entered a farm unit within a project can not make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry of a farm unit within a reclamation project, which farm unit is the equivalent of a homestead entry of 160 acres of land outside of the reclamation project.

22. Where, however, the first or original homestead entry was made subject to the restrictions and conditions of the Reclamation Act, any entry additional thereto would be likewise subject to the same restrictions and conditions, and in such cases additional entries may be allowed within reclamation projects under Acts authorizing additional entries, except where farm units have been established prior to the filing of the applications. Both entries so allowed are subject to the same adjustment to one farm unit as if the entire tract had been included in the first entry. (Henry W. Williamson, 38 L. D., 233.)



### Contests.

23. No private contest will be allowed against any entry embracing land included within the area of any first form withdrawal or land reserved for irrigation purposes, commonly known as land under the second form of withdrawal, until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges, and the date when the water can be applied and made public announcement of the same. In cases where contest has been allowed as to entries on second form lands, the Act of Congress approved June 25, 1910 (36 Stats., 835), precludes entry by successful contestants until the lands are restored to the public domain or platted to farm units and covered by public notice under section 4 of the Reclamation Act. In all cases where a contest has been allowed prior to the withdrawal of the lands, or in the case of entries on second form lands, prior to the approval of the Act of June 25, 1910, the withdrawal attaches to the lands involved immediately on cancellation of the entry and no rights can be obtained by the contestant in the event that the entry is canceled under the contest proceedings prior to the vacation of the order of withdrawal and opening of the lands to entry. In all cases where a preference right has been gained by virtue of a successful contest, terminated before the withdrawal of the land or the passage of the said Act, the successful contestant may exercise his right and make entry at any time within thirty days from notice that the lands involved have been restored to the public domain or covered by public notice and made subject to entry, but, in the latter event, his entry must be made subject to the limitations, charges, and conditions imposed by the Reclamation Act.

24. Any entry of land embraced within the area of a second form withdrawal may be contested after farm units have been established covering such entry and public notice has issued in connection with the same, fixing the water charges and the date when water can be applied, and if at the date of entry by the successful contestant the lands have not been released from the withdrawal under the provisions of the Reclamation Act, his entry will be subject to the limitations, charges, and conditions imposed by that Act.

### Leave of Absence.

25. When homestead entrymen within irrigation projects file in the local land office applications for leave of absence under the provisions of the Act of June 25, 1910, the Register and Receiver will make proper notation of the same on their records and, at once, by special letter, forward the application, together with their recommendation thereon, to the General Land Office for action.

26. These applications for leave of absence should be in the form of an affidavit, duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirements of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof.

27. When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

28. Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this Act is to protect the entry from contest for abandonment and, by the necessary implication of the Act, the period of seven years within which the entryman is required to submit final five-year proof will be extended and the entry will not be subject to cancellation for failure to submit proof until seven years from the date of entry, exclusive of the period for which leave of absence may be granted. (See Three-Year Homestead Law.)

#### Assignments.

29. Under the provisions of the Act of June 23, 1910 (36 Stat., 592) persons who have made or may make homestead entries subject to the Reclamation Act may assign their entries in their entirety at any time after filing in this office satisfactory proof of residence, improvements, and cultivation for the five years required by the ordinary provisions of the homestead law. The Act also provides for the assignment of homestead entries in part, but such assignments, if made prior to the establishment of farm units, must be made in strict accordance with the legal subdivisions of the public survey, and if made after such units are established must conform thereto, except as hereinafter provided.

30. In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. He may also assign parts of farm units included in his entry, provided the assignee has an entry covering or obtains an assignment of the remainder of such unit. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

31. Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit should be filed with the project engineer, and the assignment, with accompanying affidavit and supplemental water right application, should be filed in the local land office.

32. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey and they will also be required to make good any deficiency in their deposit.

33. When the plats describing the amended farm units are



approved by the engineer in charge of the project he will forward a copy of the amended plat to the local land office where the same will be treated as an official amendment of the farm unit plat, which will thereafter be formally approved in the usual manner by authority of the Secretary.

34. No assignment of any portion of any farm unit will be accepted by the Commissioner of the General Land Office or recognized as modifying any approved water right application or releasing any part of the farm unit as originally established from any portion of the charges announced against it until after the filing in the local land office of evidence of the qualifications of the assignee, and a proper water right application with payment of all amounts due upon the land included in the assignment.

35. Assignments under this Act must be made expressly subject to the limitations, charges, terms, and conditions of the Reclamation Act, and, inasmuch as that Act limits the right of entry to one farm unit, the assignee must present a showing in the form of an affidavit duly corroborated, that he has not acquired title to and is not claiming any other farm unit or entry under the Reclamation Act, and has no other existing water right applications covering an area of land which added to that taken by assignment will exceed one hundred and sixty acres, or the maximum limit of area fixed by the Secretary.

36. Assignments made and filed in accordance with these regulations must be noted on the local office record and at once forwarded to the General Land Office for immediate consideration, and, if approved, the assignees in each case will be required to make payment of the water right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

#### **Mortgages.**

37. Mortgages of lands embraced in homestead entries within reclamation projects may file in the local land office for the district within which the land is located a notice of such mortgage, and shall become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the land as is required to be given the entryman in connection with such proceeding. Every such notice of a mortgage received must be forthwith noted upon the records of the local land office and be promptly reported to the General Land Office, where like notation will be made. Relinquishment of a homestead entry within a reclamation project upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein, nor will an assignment of such an entry or part thereof under the Act of June 23, 1910 (36 Stat., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

#### **Cancellation.**

38. All persons holding land under homestead entries made under the Reclamation Act must, in addition to paying the water right charges, reclaim at least one-half of the total irrigable area of

their entries as finally adjusted for agricultural purposes, and reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Any failure to make any two payments when due or to reclaim the lands as above indicated, or any failure to comply with the requirements of the homestead laws and the Reclamation Act as to residence, cultivation, and improvement, will render their entries subject to cancellation and the money already paid by them subject to forfeiture, whether they have filed water right application or not.

#### **Widows and Heirs of Entrymen.**

39. The widows or heirs of persons who make entries under the Reclamation Act will not be required both to reside upon and cultivate the lands covered by the entry of the person from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes as required by the Reclamation Act and make payment of all unpaid charges when due and before either final certificate or patent can be issued.

40. Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes, be sold for the benefit of such heirs. (See heirs of Frederick C. De Long, 36 L. D., 332.) If in such case the land has been divided into farm units the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will acquire an interest only in the land which would have been allotted to the entryman as his farm unit, in either case taking subject to the payment of the charges authorized by the Reclamation Act and regulations thereunder and free from all requirements as to residence and cultivation (*idem*).

#### **Final Proof.**

#### **GENERAL INFORMATION.**

41. All persons who apply to make entry of lands within the irrigable area of any project commenced or contemplated under the Reclamation Act will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the land, and the failure to supply water from such works in time for use upon the land entered will not justify a failure to comply with the law and to make proof thereof within the time required by the statutes, except in cases where leave of absence is granted under the Act of June 25, 1910 (*supra*).

42. Persons who have resided upon, cultivated and improved their lands for the length of time prescribed by the homestead laws will not thereafter be required to continue such residence and cultivation, and they may make final proof of reclamation at any time when they can also make proof of the necessary residence, cultivation, and improvement for five years, but no final certificate or patent will issue until all fees, commissions, and construction charges, including operation and maintenance charges due at the time of payment, have been paid in full. The entire building charge and such installments of the operation and maintenance charges as are then due may be paid at any time after the entry has been conformed to a farm unit, and prior to the time on which they otherwise fall due under the terms of the public notice.



43. Soldiers and sailors of the war of the rebellion, the Spanish-American War, or the Philippine insurrection, and their widows and minor orphan children who are entitled to claim credit for the period of the soldier's service under the homestead laws, will be allowed to claim credit in connection with entries made under the Reclamation Act, but will not be entitled to receive final certificate of patent until all the water-right charges have been paid in full and the requirements as to reclamation have been met.

44. Upon the tendering to Registers and Receivers of homestead proofs in entries subject to the Reclamation Act, they will accept only the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable under such entries until proof is submitted showing full compliance with all requirements of the Act of June 17, 1902, including the payment of all reclamation charges.

45. On September 9, 1910, the Acting Secretary of the Interior approved a form of water-right certificate to be signed by the Commissioner of the General Land Office and given to water-right applicants upon submission of satisfactory proof of full compliance with the requirements of the Reclamation Act, and two forms of final affidavit, corroborated, to be submitted, the first by the owner of private land reclaimed under the Act of June 17, 1902 (32 Stat., 388), and the second by the homestead entrymen under the provisions of said Act (38 L. D., 197). These forms have been printed as forms 4-193, 4-068, and 4-073, respectively, and a supply of the last two forms has been furnished Registers and Receivers, who will require all water users desiring to make final proof of compliance with the requirements of the Reclamation Act as to reclamation of one-half of the irrigable lands in their entries or water rights and the payment of the estimated building charges and assessed operation and maintenance charges, to submit affidavit, duly corroborated by two witnesses, on the appropriate form.

46. To establish compliance with the clause of the Reclamation Act that requires reclamation of at least one-half of the irrigable area of an entry made subject to the provisions of the act, entrymen will be required to make proof showing that the land has been cleared of sagebrush or other incumbrance and leveled, that sufficient laterals have been constructed to provide for the irrigation of the required area, that the land has been put in proper condition and has been watered and cultivated, and that the growth of at least one satisfactory crop has been secured thereon, but the securing of an actual and satisfactory growth of orchard trees shall likewise be regarded as satisfactory reclamation. When proof of reclamation of one-half the irrigable area is made in advance of full payment of the charges, evidence of satisfactory proof thereof will be issued by the General Land Office.

47. Upon the filing of affidavit on form 4-068 or 4-073 as proof of compliance with the requirements of the Reclamation Act the Register and Receiver will forward copy thereof to the engineer in charge of the project, who will make prompt report thereon. Upon receipt of such report in case of homestead entries upon which final proof has been accepted by this office, the Register and Receiver will issue final certificate of compliance with the homestead laws and forward the same with the affidavit and engineer's report to

this office with such recommendations as they deem proper. When such affidavit appears sufficient, and the case is otherwise regular, final water-right certificate (Form 4-193) will issue and the case will be approved for patent. In the case of water-right contracts for lands in private ownership, final water-right certificate will be issued by this office where the final affidavit is found to be sufficient, and the certificate so issued will constitute full evidence of the water user's right to the use of water appurtenant to the lands covered by his contract.

#### REPORTS ON FINAL PROOF NOTICES.

48. Registers and Receivers are directed to furnish chiefs of field divisions with copies of notices of application to make proof, noting on each application the particular project wherein the land lies. When the notice involves any lands withdrawn under the first form withdrawal authorized by the Reclamation Act, they will indorse on the back of the notice mailed to the chief of field division: "For report by indorsement hereon as to whether the described lands, or any of them, are needed for construction purposes." In all cases as soon as such notice is received by the chief of field division, he will refer the same to the project engineer, who will make report by indorsement on the notice as to whether the lands are needed for construction purposes and as to any other matters as he may be instructed to report on by special instructions. This notice should be returned by the engineer to the chief of field division in sufficient time to enable that officer to return the same to the local land officers prior to the date fixed for proof.

49. If the lands covered by the final proof notice were entered prior to withdrawal for reclamation purposes, and the project engineer reports that they are not needed for construction purposes, final certificate will be issued upon submission of final proof as on entries not subject to the Reclamation Act. In all cases where the lands are entered prior to reclamation withdrawal and the project engineer reports that they are needed for construction purposes, and in all cases where the entry was made after withdrawal of the lands for reclamation purposes, whether or not they are needed for construction purposes, the Register and Receiver will forward the proof, if found to be regular, to the General Land Office without issuance of final certificate.

50. If any final proof offered under this Act be irregular or insufficient, the Register and Receiver will reject it and allow the entryman the usual right of appeal; and if the General Land office finds any proof forwarded to be insufficient or defective in any respect, it may be rejected and the entryman will be notified of that fact, or he may be given an opportunity to cure the defect or to present acceptable proof.

#### NOTICE TO CONFORM.

51. The Registers and Receivers are directed to notify, in writing, every person who makes final proof on a homestead entry which is subject to the limitations and conditions of the Act of June 17, 1902, embracing land included in an approved farm-unit plat, where the entry does not conform to an established farm unit, and conformation notice has not already been issued, that thirty days



from notice is allowed such entryman to elect the farm unit he desires to retain, in default of which the entry will be conformed by the General Land Office.

#### ACTION ON PROOFS.

52. Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead laws, and have submitted proof which has been found satisfactory thereunder by the General Land Office, but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units not established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry as finally adjusted and payment of all charges imposed by the public notice issued in pursuance of section 4 of the Reclamation Act.

#### Control of Sublaterals.

53. The control of operation of all sublaterals constructed or acquired in connection with projects under the Reclamation Act is retained by the Secretary of the Interior to such extent as may be necessary or reasonable to assure to the water users served therefrom the full use of the water to which they are entitled. (See 37 L. D., 468.)

#### Water Rights.

##### WATER RIGHTS FOR LANDS IN PRIVATE OWNERSHIP.

54. Lands which have been patented or which were entered before the reclamation withdrawal may obtain the benefit of the Reclamation Act, but water-right contracts may not be held for more than 160 acres by any one landowner, and such landowner must be an actual bona fide resident on such land or occupant thereof residing in the neighborhood. The Secretary of the Interior has fixed the limit of residence in the neighborhood at a maximum of 50 miles. This limit of distance may be varied, depending on local conditions. A landowner may, however, be the purchaser of the use of water for more than one tract in the prescribed neighborhood at one time, provided that the aggregate area of all the tracts involved does not exceed the maximum limit established by the Secretary of the Interior nor the limit of 160 acres fixed by the Reclamation Act; and a landowner who has made contract for the use of water in connection with 160 acres of irrigable land and sold the same together with the water right, can make other and successive contracts for other irrigable lands owned or acquired by him. Holders of more than 160 acres of irrigable land within a reclamation project must sell or dispose of all in excess of that area before they can receive water. If the holder of a greater area desires, he can subscribe for stock in the local water users' association (if there be one) for his entire holding, executing a trust deed, giving the association power to ultimately sell the excess area to actual settlers who are qualified to comply with the Reclamation Act, unless the land has been sold by the owner when the Government is ready to furnish water thereon.

55. The purpose of the Reclamation Act is to secure the reclamation of arid or semiarid lands and to render them productive, and section 8 declares that the right to the use of water acquired under this Act shall be appurtenant to the land irrigated and that "beneficial use shall be the basis, the measure, and the limit of the right." There can be no beneficial use of water for irrigation until it is actually applied to reclamation of the land. The final and only conclusive test of reclamation is production. This does not necessarily mean the maturing of a crop, but does mean the securing of actual growth of a crop. The requirement as to reclamation imposed upon lands under homestead entries shall therefore be imposed likewise upon lands in private ownership and land entered prior to the withdrawal—namely, that the landowner shall reclaim at least one-half of the total irrigable area of his land for agricultural purposes, and no right to the use of water will permanently attach until such reclamation has been shown. (See 37 L. D., 468.)

56. The provisions of section 5 of the Reclamation Act relative to cancellation of entries with forfeiture of rights for failure to make any two payments when due evidently states the rule to govern all who receive water under any project, and accordingly a failure on the part of any water-right applicant to make any two payments when due shall render his water-right application subject to cancellation with the forfeiture of all rights under the Reclamation Act as well as of any moneys already paid to or for the use of the United States upon any water right sought to be acquired under said Act. (37 L. D., 468.)

#### VESTED WATER RIGHTS.

57. The provision of section 5 of the Reclamation Act limiting the area for which the use of water may be sold does not prevent the recognition of a vested right for a larger area and protection of the same by allowing the continued flowing of the water covered by the right through the works constructed by the Government under appropriate regulations and charges.

#### CORPORATION LANDS.

58. Under dates of February 2, 1909 (37 L. D., 428), and March 3, 1909, the department held that under section 5, Act of June 17, 1902, a corporation, otherwise competent, is entitled to take water under the statute, provided its home office is on or in the neighborhood of the land for which it seeks water service.

59. Further, that the corporation must show its stockholders, and that as individuals they have not in the aggregate taken water rights that, with that claimed by the corporation, will amount to more than 160 acres or the maximum limit of area established by the Secretary of the Interior. Registers and Receivers are accordingly instructed to be guided by the rulings of the department, as set forth above, in their action on water-right applications by corporations when presented.

#### TOWNSITE SUBDIVISIONS.

60. Where water-right application has been made and accepted for land in private ownership, no new water-right application by any purchaser of part of the irrigable area of such private land will



be accepted for land so purchased, if the same is subdivided into lots of such form and area as to indicate a use thereof for townsite rather than for agricultural or horticultural purposes. In such case, no notation shall be made of such transfer on the original water-right application, but water will be furnished such land on the original application, and the water-right charges collected thereunder, as if no such sale or sales had been made.

61. Water for land subdivided into such form and areas as to indicate a use thereof for townsite rather than for agricultural or horticultural purposes may be procured for the entire areas so subdivided, by contract with the Reclamation Service through the proper representatives of the landowners, as authorized by the Secretary of the Interior under the Acts of April 16 and June 27, 1906 (34 Stat., 116 and 519).

62. Where separate water-right applications, otherwise valid, have been accepted for lands subdivided into such form and areas as indicate a use thereof for townsite rather than for agricultural and horticultural purposes, such water-right applications and the corresponding subscriptions to the stock of the water users association may be surrendered and canceled, and water supplied to such lands under the provisions of the said Acts of April 16 and June 27, 1906, upon such terms and conditions as will return to the Reclamation Service an amount not less than the charges due under such water-right-applications. Similar adjustment by cancellation and new contract may be made where water-right application has been accepted and the land has been subsequently subdivided into tracts of form and area as above.

#### WATER-RIGHT APPLICATION.

63. The department has adopted three forms of applications for water rights, viz., Form A (4-021) for homesteaders who have made entries of lands withdrawn under the second form of withdrawal; Form B (4-020) for private owners of lands embraced within said project; and Form C (4-019) for Indian allottees. Copies of these forms have been furnished Registers and Receivers, and they will be used in all applications for water rights in any of the reclamation projects.

64. Upon notice issued by the Secretary of the Interior that the Government is ready to receive applications for water right for described lands under a particular project, all persons who have made entries of lands under the provisions of the Act of June 17, 1902 (32 Stat., 388), will be required to file application for water rights on Form A for the number of acres of irrigable land in the farm unit entered, as shown by the plats of farm units approved by the Secretary of the Interior.

65. Upon the issuance of such notice private landowners and entrymen whose entries were made prior to withdrawal may, in like manner, apply on forms B or C for water rights for tracts not containing more than 160 acres of irrigable land, according to the approved plats, unless a smaller limit has been fixed as to lands in private ownership by the Secretary of the Interior.

66. Each application on Form B or Form C must contain a statement as to the distance of the applicant's residence from the land for which a water right is desired.

67. If a greater distance than that fixed for the project is shown in any application, the case should be reported to the Commissioner of the General Land Office for special consideration upon the facts shown. If the applicant is an actual bona fide resident on the land for which water-right application is made, the clause in parentheses of Form B or Form C, regarding residence elsewhere, must be stricken out.

68. The applicant on Form B or Form C must state accurately the nature of his interest in the land. If this interest is such that it can not ripen into a fee-simple title at or before the time when the last annual installment for water right is due, the Register and Receiver must reject the application.

69. Form B (4-020) is intended for use by owners of private land and entrymen whose entries were made prior to the withdrawal of the land within reclamation projects in entering into contracts with the United States for the purchase of a water right, and must be signed and sealed in duplicate and acknowledged before a duly authorized officer in the manner provided by local law. A space is provided on the blank for evidence of the acknowledgment, which should be in exact conformity to that required by the statutes of the State in which the lands covered by the contract lie for the execution of mortgages or deeds of trust. When so executed both originals must be filed in the local land office together with three complete copies, either in person or by mail. If the application is regular and sufficient in all respects, duly approved by the project engineer, and bears the certificate of the secretary of the local water users' association, if there be one, and is accompanied by the proper payments required by the provisions of the public notices issued in connection with the local reclamation project, the Register will accept the same by filling out the blank provided at the bottom of the third page and attach his signature and seal by placing a scroll around the word "Seal."

70. Attention is especially called to sections 3743 and 3747, inclusive, of the Revised Statutes, relative to the deposit and execution of public contracts. The Register will immediately after execution of the contract execute the oath of disinterestedness required by section 3745, Revised Statutes, before a duly authorized officer on the blank form provided on the last page of the water-right contract.

No funds are available for the payment by the Government of any fees in connection with this oath, and the Register should therefore take such oath before the Receiver of public moneys, who is precluded by section 2246, Revised Statutes, from charging or receiving directly or indirectly any compensation for the administering of such oath. In the event that it becomes necessary to take this oath before any other authorized officer, the fee due such officer must be paid to him by the water-right applicant, and Registers are authorized to refuse to accept the water-right application on failure of the applicant to make such payment.

71. Section 3744, Revised Statutes, makes it the duty of a public officer executing a contract on behalf of the United States to file a copy of the same in the returns office of this department as soon as possible and within thirty days after the making of the contract, and Registers will therefore forward to that office one of



the original copies of each contract as soon as possible after the execution of the same. The provision of said section requiring that all papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return, does not apply to the contracts for the purchase of water rights, because of the fact that only one paper is used.

72. As stated in the instructions for the execution of the blank upon the third page thereof, the contract must be duly recorded in the records of the county in which the lands are situated, and therefore immediately upon execution of the contract the second original copy will be returned to the applicant, and he will be required to have the contract duly recorded by the proper recording officer, at his own expense, and return the contract to the local land office within thirty days, in default of which the Register and Receiver will make report to the General Land Office and the contract will be canceled without further notice for failure to comply with the regulations.

73. Upon return of the original copy of the contract to the local land office bearing certificate at the bottom of the last page, executed by the recording officer showing the recordation of the instrument, the Register will fill out the same blank on the three copies held in his office, signing the name of the recording officer with the word "signed" in parentheses, preceding such name. The second original copy, when thus completed, is to be forwarded to the Auditor of the Treasury Department for the Interior Department, and one of the other copies will be forwarded to the applicant, one to the project engineer and the last copy must be forwarded to this office with the regular monthly returns.

74. No new forms of water-right application carrying assignments of credit (4-020a and 4-021a) have been prepared, and the use of the old forms bearing these numbers has been abandoned, and where application is filed by an assignee either of an entryman under the Reclamation Act or a private landowner, the new forms 4-020 or 4-021 should be used, and at the bottom of the last page, without the use of any additional papers, the prior applicant should execute the following form, either written in ink or typewritten:

I, \_\_\_\_\_, for value received, hereby sell and assign to \_\_\_\_\_ all my right, title and interest in and to any credits heretofore paid on water-right application No. \_\_\_\_\_ for the above-described land, together with all interests possessed by me under said application.

\_\_\_\_\_  
Assignor.

\_\_\_\_\_  
Witness.

75. Action on cases bearing such assignment will be the same as on other cases, except that the assignment must be permissible under the provisions of existing public notices and departmental regulations.

76. In order to avoid discrepancies in areas and resulting payments and the acceptance of applications for tracts not designated as lands for which water can be furnished, the following instructions are issued:

I. When practicable, all applications for water rights, both by

homesteaders who have made entries of lands withdrawn and by private owners of lands embraced within a reclamation project, should be submitted by the applicants to the project engineer, United States Reclamation Service, for his examination and approval, before the applications are filed in the local land offices. In such cases the project engineers will indorse their approval upon the application forms if found correct, or point out defects and suggest corrections if any are required.

II. Where, because of lack of time, distance, or necessity of submitting the water-right applications with applications to make original homestead entries, etc., it is not practicable to have the water-right applications examined and approved by the project engineer prior to the filing in the local land office, the water-right applications must be filled out and filed in the local land office accompanied by an extra copy. Registers and Receivers will suspend action in such cases and daily forward to the proper project engineer one copy of each of such water-right applications for examination and return by the engineer within fifteen days, approved by him, or with defects indicated and corrections suggested if not in form for approval. In the latter case the applicant should be promptly advised and allowed thirty days to make the necessary amendments, in default of which the application will be rejected.

III. The Reclamation Service will advise its project engineers that their approval will be regarded as certifying to the correctness of the following matters: (a) That the land described is subject to water-right application under the project; (b) that the irrigable acreage shown is correct in accordance with the public notices, the official plats, and instructions approved by the Secretary of the Interior; (c) that the number of acre-feet per annum to be furnished is correctly stated; (d) that the amount of the building charge is correctly stated; (e) that the number of annual installments is correctly stated. Before certifying any water-right application for private lands the local engineer of the Reclamation Service shall see that it includes all the land owned by the applicant within the subdivision in addition to the other irrigable lands owned by him on the project and open to application for a water right, not exceeding the limit of area fixed by the Reclamation Act and the public notice in pursuance of which the application is presented.

IV. These regulations are designed to aid the applicants in presenting water-right applications which will be correct in form, and which contain matters essential to the approval of their applications; also, to aid the Registers and Receivers of local land offices in the consideration of such application; and Registers and Receivers are, therefore, enjoined to use both care and diligence in enforcing the above requirements.

V. If the Secretary of the Interior has made a contract with a water users' association organized under the project, due notice thereof will be given to the Registers and Receivers, and applications for water rights should not be accepted in such cases unless the certificate at the end thereof has been duly executed by the said association.

77. The following rules are laid down with reference to water-



right applications for land in private ownership, including entries not subject to the Reclamation Act:

I. Where water-right application is presented covering only part of the irrigable area of a subdivision in private ownership, not subdivided into lots and blocks for townsite purposes, the Register and Receiver will accept it, provided it bears the usual certificates of the project engineer and the local water users' association (where such association has been formed and contract entered into with the Secretary of the Interior).

II. In case of sale by a private owner of part of the irrigable land covered by a subsisting water-right application, the vendor, in order to have his water-right charges adjusted to the reduced acreage retained by him, will be required to present the following evidence:

a. Certificate of the proper officer having charge of the county records, showing record of a subscription for stock in the local water users' association covering the land in question and that the land has been duly conveyed by the subscriber at a time subsequent to the recording of the stock subscription.

b. The certificate of the local water users' association, if one has been organized on the project, under corporate seal, to the effect that proof has been presented to the association of the transfer of the land to the person named and that appropriate transfer has been made on its books of the shares of stock appurtenant to said land.

c. The vendor should also so arrange that his vendee shall promptly make a water-right application for the irrigable land within the tract conveyed to him, and upon presentation and acceptance of such application appropriate notation of such transfer, with a reference to the new water-right application, will be made on the original or prior water-right application.

III. In case of relinquishment by an entryman, whose entry is not subject to the Reclamation Act, of a part of the land included in his entry, appropriate notation will be made on his water-right application, showing such relinquishment, and his charges will be reduced accordingly.

IV. Where an entryman relinquishes a part of his entry under conditions described in Rule III hereof, and the next person who enters the land so relinquished claims credit for installments paid by the first entryman, he must at the time of such entry file with his application to enter an assignment in writing of the water-right credits of the prior entryman; also a water-right application covering the land entered.

78. In order that there may be no unnecessary delay in the obtaining of water by entrymen and landowners in reclamation projects, after they have filed water-right applications and made the required preliminary payment, the Register and Receiver are directed to issue in triplicate certificates of water-right applications accepted in connection with homestead entries made subject to the Reclamation Act. Certificate of filing water-right application will not be issued hereafter in connection with the new Form B (4-020), inasmuch as the acceptance of the contract is equivalent to such certificate. One copy of each certificate of filing

water-right application issued and of each water-right contract for lands in private ownership executed will be forwarded to the applicant and one copy to the engineer in charge of the project. At the end of each month the Register and Receiver are to prepare a schedule, Form 4—115b, of certificates issued upon water-right applications accepted during the month, showing also contracts executed, and an abstract, Form 4—105b, of collections of charges made during the month, forwarding the original in triplicate to this office and furnishing the Director of the Reclamation Service and the project engineer with copies of each monthly schedule of certificates and abstract of collections made. Receipts made from the sale of townsite lots should be reported separately on Form 4—105 for payment into the reclamation fund as original receipts on account thereof.

79. The copies of certificates of water-right applications and contracts must be forwarded, on the day issued, to the engineer in charge of the reclamation project wherein the lands are situated, and the monthly abstract of collections must be prepared and copy forwarded to him immediately after the close of the month during which the collections were made.

80. As above indicated, prompt action is essential in these matters in order that the applicants who are entitled to water may receive same at the earliest possible moment; and any dereliction in furnishing the copies of certificates and abstracts above indicated will be considered a failure of satisfactory performance of duty.

#### WATER-RIGHT CHARGES.

81. The Secretary of the Interior will at the proper time, as provided in section 4 of the Reclamation Act, fix and announce the area of lands which may be embraced in any entry thereafter made or which may be retained in any entry theretofore made under the Reclamation Act; the amount of water to be furnished per annum per acre of irrigable land and the charges which shall be made per acre for the irrigable lands embraced in such entries and lands in private ownership, for the estimated cost of building the works and for operation and maintenance, and prescribe the number and amount and the dates of payment of the annual installment thereof.

82. Under the Act of February 13, 1911 (36 Stats., 902) the Secretary is authorized in his discretion to withdraw any public notice issued prior to the passage of the Act.

83. If any entry subject to the Reclamation Act of June 17, 1902 (32 Stat., 388) is canceled or relinquished, the payment for water-right charges already made and not assigned in writing to a prospective or succeeding entryman under the provisions of paragraph 85 hereof are forfeited. All water-right charges which remain unpaid are canceled by the relinquishment or cancellation of the entry, except as provided by the specific provisions of public notices applicable to particular projects.

84. Any person who thereafter enters the same land must, in the absence of an assignment in writing or public notice to the contrary, pay the water-right charges as if the land had never been previously entered. No credit will be allowed in such cases for the



payment made by the prior entryman, and the new entryman must pay at the time of filing his homestead application and water-right application, such charges for building and operation and maintenance as are required by the public notice in force at the time on the particular project.

85. A person who has entered lands under the Reclamation Act, and against whose entry there is no pending charge of non-compliance with the law or regulations, or whose entry is not subject to cancellation under this Act, may relinquish his entry to the United States and assign to a prospective or succeeding entryman any credit he may have for payments already made under this Act on account of said entry, and the party taking such assignment may, upon making proper entry of the land and proving the good faith of the prior entryman to the satisfaction of the Commissioner of the General Land Office, receive full credit for all payments thus assigned to him, but must otherwise comply in every respect with the homestead law and the Reclamation Act.

86. The transfer of lands in private ownership covered by water-right contract before cancellation of the contract carries with it the burden of water-right charges and credit for the payments made by the prior owner. (See Dept. decision Mar. 20, 1911, in case of Fleming McLean and Thomas Dolf, 39 L. D., 580.)

87. All charges due for operation and maintenance of the irrigation system for all the irrigable land included in any water-right application must be paid on or before April 1 of each year, except where a different date is specified in the orders relating to the particular project, and in default of such payment no water will be furnished for the irrigation of such lands.

#### REGULATIONS AS TO THE COLLECTION OF RECLAMATION WATER-RIGHT CHARGES BY RECEIVERS OF PUBLIC MONEYS.

88. In accordance with the provisions of section 5 of the Reclamation Act, all payments of the annual installments of reclamation water-right charges, including the portions for building charges and operation and maintenance charges on reclamation water-right applications, shall be made to the Receivers of public moneys of the respective local land districts, but, for the convenience of the water-right applicants, the charges provided may be tendered to and received by the designated special fiscal agents for the several irrigation projects for transmission by them to the proper Receivers of public moneys. The acceptance of these water-right charges by the fiscal agents of the Reclamation Service can not be held to be a payment to the United States in accordance with the requirements of section 5 of the Reclamation Act until the moneys are actually in the hands of the proper Receivers of Public moneys. The permission granted above is only for the convenience of water-right applicants, but care will be taken to properly safeguard the handling of such funds until their receipt by the respective Receivers of public moneys. Notice of overdue water-right charges will be sent to water users by the Registers and Receivers whenever directed by the General Land Office and a press copy of every such notice must be sent to the project engineer in charge of the project on the same day without waiting for the end of the month.

89. Where payment is tendered for a part only of either an annual installment of water-right building charges or an annual operation and maintenance charge, Receivers may hereafter accept the same if the insufficient tender is, in the opinion of the Receiver, caused by misunderstanding as to the amount due and approximates the same.

90. In all cases of insufficient payment accepted in accordance with the provisions of the foregoing paragraph, receipts must issue for the amount paid and the money be deposited to the credit of the "Reclamation Fund," and the water user shall be immediately notified by registered letter that the payment is insufficient and allowed a period of thirty days to make payment of the balance due to complete the charge on which a part payment has been made. If the balance is paid within this period additional receipt must issue therefor, but if not paid within thirty days, report shall be made to the Commissioner of the General Land Office.

91. In all other cases where insufficient tenders are made Receivers will issue receipts therefor and return the money by their official check, with notice to the water user as to the reason for its return and properly report the transaction in their accounts.

92. When full payment is tendered direct to the Receiver of public moneys, and upon examination is found to be correct, the Receiver will issue the usual receipt, and send a press copy to the project engineer on the day issued.

93. Where payment is tendered through special fiscal agents of the Reclamation Service, and, upon examination, the amounts so transmitted by the special fiscal agent are found to be correct, the Receiver will then issue the usual receipt and transmit the same to the water-right applicant at his record post-office address. The Receiver will receipt to such special fiscal agent upon one copy (and retain the other copy) of the "Abstract of receipts of reclamation water-right charges (R. S., Form 7-406)" received from the special fiscal agent at the end of each month. See section 8 of instructions of May 27, 1908, to special fiscal agents, by the United States Reclamation Service.

94. Attention is invited to paragraph 4 of "Circular of instructions to special fiscal agents by the United States Reclamation Service," dated May 27, 1908, and in accordance therewith Receivers of public moneys will require payment direct to themselves in all matters involving tenders for fees on homestead entries; tenders for first installments on water-right applications, including both the portion for building and the portion for operation, and maintenance charges where the public notices require the first installment to be paid at the time of filing homestead entries, and tenders upon water-right applications where a notice of contest against the entry upon which the water-right application rests, has been reported by the Register of the land office. In all such cases payments must be made direct to the Receiver of public moneys.

95. All moneys collected in connection with water-right applications, both those received direct from water-right applicants and through special fiscal agents, must be deposited in Receivers' designated depositories to the credit of the Treasurer of the United States "on account of reclamation fund, water-right charges"



96. By section 5 of the Act of June 27, 1906 (34 Stat., 519), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the Reclamation Act of June 17, 1902, will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

97. This Act applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project or by any withdrawal of public lands under the Reclamation Act, from improving or reclaiming the lands covered by their entries.

98. No entryman will be excused under this Act from a compliance with all of the requirements of the desert-land law until he has filed in the local land office for the district in which his lands are situated an affidavit showing in detail all of the facts upon which he claims the right to be excused. This affidavit must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

99. The Register and Receiver will at once forward the application to the engineer in charge of the reclamation project under which the lands involved are located and request a report and recommendation thereon. Upon the receipt of this report the Register and Receiver will forward it, together with the applicant's affidavit and their recommendation, to the General Land Office, where it will receive appropriate consideration and be allowed or denied, as the circumstances may justify.

100. Inasmuch as entrymen are allowed one year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of this Act are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the Act, the applicant will file his affidavit explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

101. An entryman will not need to invoke the privileges of this Act in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of

a reclamation project, the affidavit explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

102. When the time for submitting final proof has arrived, and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, as indicated herein, he will be excused, and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

103. If after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman will begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must comply with all the provisions of the Act of June 17, 1902, and must relinquish all the land embraced in his entry in excess of 160 acres; and upon making final proof and complying with the terms of payment prescribed in said Act of June 17, 1902, he shall be entitled to patent. The area of the entry in excess of 160 acres must be relinquished to the United States and entrymen will not be permitted to assign such excess. See departmental decision of January 20, 1912 (40 L. D., 386).

104. Special attention is called to the fact that nothing contained in the Act of June 27, 1906, shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the Reclamation Act of June 17, 1902, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

105. Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish to the Government all of the lands embraced in their entries in excess of 160 acres whenever they are required to do so through the local land office, and must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project.

#### **Townsites in Reclamation Projects.**

106. Withdrawal, Survey, Appraisement, and Sale.—Townsites in connection with irrigation projects may be withdrawn and reserved by the Secretary of the Interior under the Acts approved April 16 and June 27, 1906 (34 Stat., 116, secs. 1, 2, and 3; and 519, sec. 4, respectively), and thereafter will be surveyed into town lots with appropriate reservations for public purposes, and will be appraised and sold from time to time in accordance with special regulations provided under section 2381, United States Revised Statutes, governing reclamation townsites.

107. Survey and Appraisal.—Townsites under any law direct-



ing their disposition under section 2381, will be surveyed, when ordered by the department, under the supervision of this office, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the Secretary of the Interior. Each appraiser must take his oath of office and transmit the same to this office before proceeding with his work. This office must be notified by wire of the time when such appraiser or appraisers enter on duty. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for public purposes will not be appraised.

108. The schedule of appraisement must be prepared in duplicate on forms furnished by this office, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to this office, and when approved by the Secretary of the Interior one copy will be sent to the local officers.

109. Notices of sale will be published for thirty days (unless a shorter time be fixed in a special case) by advertisement in such newspapers as the department may select and by posting a copy of the notice in a conspicuous place in the Register's office.

110. How Sold.—Beginning on the day fixed in the notice and continuing thereafter from day to day (Sundays and legal holidays excepted) as long as may be necessary, each appraised lot will be offered for sale at public outcry to the highest bidder for cash, at not less than its appraised value.

111. Qualifications and Restrictions.—No restriction is made as to the number of lots one person may purchase. Bids and payments may be made through agents, but not by mail or at any time or place other than that fixed in the notice of sale.

112. Combinations in restraint of the sale are forbidden by section 2373 of the Revised Statutes of the United States, which reads as follows:

Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders or prevents, or attempts to hinder or prevent any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

113. Suspension or postponement of the sale may be made for the time being, to a further day, or indefinitely, in case of any combination which effectually suppresses competition or prevents the sale of any lot at its reasonable value, or in case of any disturbance which interrupts the orderly progress of the sale.

114. Payments and Forfeitures.—If any bidder to whom a lot has been awarded fails to make the required payment therefor to the Receiver, before the close of the office on the day the bid was accepted, the right thereafter to make such payment will be deemed forfeited, and the lot will be again offered for sale on the following day, or if the sale has been closed, then such lot will be considered as offered and unsold, and all bids thereafter by the de-

faulting bidder may, in the discretion of the local officers, be rejected.

115. Lots Offered and Unsold.—Each lot offered and remaining unsold at the close of the sale will thereafter be and remain subject to private sale and entry, for cash, at the appraised value of such lot.

116. Certificates.—All lots purchased at the same time, in the same manner, in the same townsite, and by the same person should be included in one certificate, in order to prevent unnecessary multiplicity of patents. Lots sold at private sale should be accompanied by an application therefor, signed by the applicant. Certificates will be issued upon payment of the purchase price, as in other cases.

117. In all cases where the Secretary of the Interior shall direct the reappraisal of unsold lots under the first section of the Act of June 11, 1910 (36 Stats., 465), the reappraisal will be conducted under the regulations provided for under the original appraisal of lots in townsites created under the laws in said Act mentioned. The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value, which offering will be conducted under the regulations providing for the public sale of lots in such townsites. The lots so offered at public sale will then become subject to private sale at the reappraised price.

118. Whenever the Secretary of the Interior, in the exercise of the discretion conferred upon him by section 2 of said Act, shall order the payment of the purchase price of lots, sold in townsites created under the laws in said Act mentioned, to be made in annual installments, the same will be done under such regulations as may be issued in each particular instance. Transfers of lots will not be recognized, but entries and patents must be issued in the name of the original purchasers.

Fred Dennett,  
Commissioner.

Approved, April 29, 1912.

Samuel Adams,

First Assistant Secretary of the Interior.



## [Circular No. 110.]

Department of the Interior,  
General Land Office,  
Washington, May 10, 1912.

SPECIAL INSTRUCTIONS RELATIVE TO ASSIGNMENT OF RECLAMATION HOMESTEAD ENTRIES.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is directed to the provisions of departmental circular approved April 29, 1912, relative to assignments of homestead entries under the Act of June 23, 1910, reading as follows:

Under the provisions of the Act of June 23, 1910 (36 Stats., 592), persons who have made or may make homestead entries subject to the Reclamation Act may assign their entries in their entirety at any time after filing in this office satisfactory proof of residence, improvements, and cultivation for the five years required by the ordinary provisions of the homestead law. The Act also provides for the assignment of homestead entries in part, but such assignments, if made prior to the establishment of farm units, must be made in strict accordance with the legal subdivisions of the public survey, and if made after such units are established must conform thereto, except as hereinafter provided.

In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. He may also assign parts of farm units included in his entry, provided the assignee has an entry covering or obtains an assignment of the remainder of such unit. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit should be filed with the project engineer, and the assignment, with accompanying affidavit and supplemental water-right application, should be filed in the local land office.

If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey and they will also be required to make good any deficiency in their deposit.

When the plats describing the amended farm units are approved by the engineer in charge of the project he will forward a copy of the amended plat to the local land office, where the same will be treated as an official amendment of the farm-unit plat, which will thereafter be formally approved in the usual manner by authority of the Secretary.

No assignment of any portion of any farm unit will be accepted by the Commissioner of the General Land Office or recognized as modifying any approved water-right application or releasing any part of the farm unit as originally established from any portion of the charges announced against it until after the filing in the local land office of evidence of the qualifications of the assignee, and a proper water-right application with payment of all amounts due upon the land included in the assignment.

Assignments under this Act must be made expressly subject to the limitations, charges, terms, and conditions of the Reclamation Act, and, inasmuch as that Act limits the right of entry to one farm unit, the assignee must present a showing in the form of an affidavit, duly corroborated, that he has not acquired title to and is not claiming any other farm unit or entry under the Reclamation Act, and has no other existing water-right applications covering an area of land which added to that taken by assignment will exceed one hundred and sixty acres, or the maximum limit of area fixed by the Secretary.

Assignments made and filed in accordance with these regulations must be noted on the local office record and at once forwarded to the General Land Office for immediate consideration, and, if approved, the assignees in each case will be required to make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

### Mortgages.

Mortgages of lands embraced in homestead entries within reclamation projects may file in the local land office for the district within which the land is located a notice of such mortgage, and shall become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the land as is required to be given the entryman in connection with such proceeding. Every such notice of a mortgage received must be forthwith noted upon the records of the local land office and be promptly reported to the General Land Office, where like notation will be made. Relinquishment of a homestead entry within a reclamation project upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein, nor will an assignment of such an entry or part thereof under the Act of June 23, 1910 (36 Stats., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

Very respectfully,

S. V. Proudfit,  
Assistant Commissioner.

### RECLAMATION ENTRY—CANCELLATION OR RELINQUISHMENT— WATER RIGHT PAYMENTS.

[Circular.]

Department of the Interior,  
General Land Office,  
Washington, February 2, 1912.

Registers and Receivers, United States Land Offices.

Sirs: Paragraph 61 of the circular of May 31, 1910 (38 L. D., 620), is hereby amended to read as follows:

If any entry subject to the Reclamation Act of June 17, 1902 (32 Stat., 388), is canceled or relinquished, the payment for water right charges already made and not assigned in writing to a prospective or succeeding entryman under the provisions of paragraph 62 of the circular of May 31, 1910, are forfeited. All water-right charges which remain unpaid are canceled by the relinquishment of cancellation of the entry except as provided by the specific provisions of public notices applicable to particular projects.

Any person who thereafter enters the same land must, in the absence of an assignment in writing or public notice to the contrary, pay the water-right charges as if the land had never been previously entered. No credit will be allowed in such cases for the payment made by the prior entryman, and the new entryman must pay at the time of filing his homestead application and water-right application, such charges for building and operation and maintenance as are required by the public notice in force at the time on the particular project.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:

Samuel Adams,  
First Assistant Secretary.

[In reply please refer to Circular No. 137.]

Department of the Interior,  
General Land Office,  
Washington, June 25, 1912.

### RELATIVE TO RELINQUISHMENTS OF PARTS OF FARM UNITS.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is directed to department regulations approved December 18, 1911, on recommendation of the Director of the Reclamation Service, dated November 28, 1911, reading as follows:

"1. A homestead entryman subject to the Reclamation Act of June 17, 1902 (32 Stat., 388), may relinquish a part of his farm unit and have the payments which had been made on the relinquished part credited on the charges against the retained part, provided that the amendment in question may be



allowed without jeopardizing the interests of the Government in the collection of the charges against the portion of the tract relinquished.

"2. The entryman desiring to make such relinquishment shall submit his application therefor to the Project Engineer, who will transmit the same with his recommendation through the proper channel to the Director, who, if he finds no objection, will proceed as in other cases of proposed amendments of farm units."

When you are advised of the amendment of an established farm unit and its division into two or more farm units, and the entryman of the original farm unit files a relinquishment of all the lands in his entry outside of one of the newly established farm units and also files an application for readjustment of his water-right payments, so that the payments which had been made on the relinquished area may be credited on the irrigable area of the lands retained, you will make proper notation of such relinquishment on your records in the usual manner and will immediately readjust the water-right accounts in connection with such entry, and you will apply all moneys previously collected for water-right building charges toward the reduced area. The payments made for operation and maintenance charges for years prior to the relinquishment would not be subject to reduction.

Advise this office in every case where charges are so adjusted, transmitting the application of the entryman by special letter.

Very respectfully.

S. V. Proudfit,  
Assistant Commissioner.

## **RULES OF PRACTICE IN CASES BEFORE THE UNITED STATES DISTRICT LAND OFFICES, THE GENERAL LAND OFFICE, AND THE DEPARTMENT OF THE INTERIOR—APPROVED DECEMBER 9, 1910. (SEE INDEX PAGE 251.)**

### **IMPORTANCE NOTICE.**

These Rules of Practice materially change those previously in force in respect to a number of important matters.

Note.—Where the old and new rules are substantially the same the decisions under former rules have been noted under proper section in these rules.

### **PROCEEDINGS BEFORE REGISTERS AND RECEIVERS.**

Annotations refer to decisions of the Department of the Interior relating to Public Lands.

#### **Initiation of Contests.**

Rule 1. Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Land Department.

Any protest or application to contest filed by any other person shall be forthwith referred to the Chief of the Field Division, who will promptly investigate the same and recommend appropriate action.

(See vol. 40, L. D., 557.)

#### **Application to Contest.**

Rule 2. Any person desiring to institute contest must file, in duplicate, with the Register and Receiver, application in that behalf, together with statement under oath containing:

a. Name and residence of each party adversely interested, including the age of each heir of any deceased entryman.

b. Description and character of the land involved.

c. Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

d. Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

e. Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

f. That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

g. Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

h. Address to which papers shall be sent for service on such applicant.

(Vol. 40-555 and 557.)

Rule 3. The statements in the application must be corroborated by the affidavit of at least one witness.

Land decisions: Vol. 2, page 57, 213; vol. 8, page 446; vol. 11, page 326; vol. 13, 333; vol. 14, 588; vol. 15, 300; vol. 16, 395; vol. 17, 99; vol. 19, 445; vol. 22, 189, 209, 468, 629; vol. 23, 314; vol. 27, 54; vol. 40, 496.

Rule 4. The Register and Receiver may allow any application to contest without reference thereof to the Commissioner; but they must immediately forward copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

#### **Contest Notice.**

Rule 5. The Register and Receiver shall act promptly upon all applications to contest and, upon the allowance of any such application, shall issue notice, directed to the persons adversely interested, containing:

a. The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

b. Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

(For contents of notice when publication is ordered, see Rule 9.)

#### **Service of Notice.**

Rule 6. Notice of contest may be served on the adverse party personally or by publication.

Rule 7. Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is



made by publication, copy of the affidavit of contest must be served with such notice.

For the information of those who find it necessary to make service by registered mail, the following regulation of the Post Office Department is printed below:

Office of Third Assistant Postmaster General,  
Washington, D. C., October 25, 1910.

To those concerned:

Sufficient time having elapsed since the issuance of the Postmaster General's Order No. 3276, amending sections 811, 852, and 855 of the Postal Laws and Regulations, providing that return receipts for registered mail shall be furnished only when the sender shall make request therefor by an indorsement upon the article, it is believed that the majority of the patrons of the registry service are now familiar with this requirement. Therefore, that part of the instructions from this office dated July 12, 1910, printed on pages 12 and 13 of the August, 1910, Postal Guide, requiring that "until further notice postal employees accepting mail for registration must in every case if a return receipt is desired," is hereby revoked, effective December 1, 1910.

A. M. Travers.

8. (Amended Mar. 11, 1912.) Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 10 days after such order and proof of publication is made not later than 20 days after the fourth publication, as specified in rule 10, the contest shall abate: Provided, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

#### Circular No. 150.

##### Serving Notice by Publication.

Rule 9. Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within thirty days after the allowance of application to contest and within ten days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within fifteen days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office, and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

The published notice of contest must give the names of the parties thereto, description of the land involved, identification, by appropriate reference, of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that, upon failure to answer within twenty days after the completion of publication of such notice, the allegations of said affidavit of contest will be taken as confessed.

The affidavit of contest need not be published.

There shall be published with the notice a statement of the dates of publication.

10. (Amended Mar. 7, 1911.) Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

Copy of the notice, as published, together with copy of the affidavit of contest, shall be sent by the contestant, within 10 days after the first publication of such notice, by registered mail, directed to the party for service upon whom such publication is being made, at the last address of such party as shown by the records of the land office, and also at the address named in the affidavit for publication, and also at the post office nearest the land.

Copy of the notice, as published, shall be posted in the office of the register, and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as hereinabove provided.

#### **Circular No. 150.**

Rule 11. Proof of publication of notice shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher, or foreman, of the newspaper publishing the same, showing the publication thereof in accordance with these rules.

Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the Register as to posting in the local land office.

#### **Defective Service of Notice.**

Rule 12. No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but, in such case, the time to answer may be extended in the discretion of the Register and Receiver.

#### **Answers by Contestee.**

Rule 13. Within thirty days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within twenty days after the fourth publication, as prescribed by these rules, the party served must file with the Register and Receiver answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application of contest, or personally in the manner provided for the personal service of notice of contest.

Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

#### **Failure to Answer.**

14. (Amended July 24, 1912.) Upon the failure to serve and file answer as provided by rule 13, the allegations of the contest



affidavit will, on motion of contestant made within 20 days after the date the answer is required to be filed and before any answer is filed, be taken as confessed, or in case of failure of contestee to file answer and of contestant to file motion within the time prescribed, the allegation of the contest affidavit may be taken as confessed and judgment entered by the Commissioner of the General Land Office without the award of preference right to contestant. Due service of notice, either personally or by publication, as provided by rule 8, must appear in all such cases. At the end of the period herein prescribed the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office, and notify the parties by registered mail of the action taken.

### **Circular No. 150.**

#### **Date and Notice of Trial.**

**Rule 15.** Upon the filing of answer and proof of service thereof, the Register and Receiver will forthwith fix time and place for taking testimony, and notify all parties thereof by registered letter mail not less than twenty days in advance of the date fixed.

#### **Place of Service of Papers.**

**Rule 16.** Proof of delivery of papers required to be served upon the contestant at the place designated under clause (h) of Rule 2, in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and, where notice of contest has been given by registered mail, and the registry return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received, shall, in the absence of other direction by such adverse party, be sufficient.

Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

#### **Continuance.**

**Rule 17.** Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that—

(a) The matter to which such witness would testify if present is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

**Rule 18.** One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

**Rule 19.** No continuance shall be granted if the opposite party shall admit that the witness, on account of whose absence continuance is desired, would, if present, testify as stated in the application for continuance.

Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

#### **Depositions and Interrogatories.**

**Rule 20.** Testimony may be taken by deposition when it appears by affidavit that—

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

Land decisions: Vol. 2, page 235; vol. 3, 584; vol. 4, 208; vol. 8, 199; vol. 11, 576; vol. 15, 263; vol. 16, 98, 296; vol. 17, 324; vol. 22, 532; vol. 26, 198; vol. 31, 68.

**Rule 21.** The party desiring to take deposition must serve upon the adverse party and file with the Register and Receiver, affidavit setting forth the name and address of the witness and one or more of the above-named grounds for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

Land decisions: Vol. 3, page 584; vol. 4, 208; vol. 8, 199; vol. 9, 137; vol. 10, 480; vol. 11, 576; vol. 16, 296, 362; vol. 17, 324; vol. 22, 532.

**Rule 22.** The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding rule, serve and file cross-interrogatories.

Vol. 16, 296, 362.

**Rule 23.** After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, commission to take the deposition shall be issued by the Register and Receiver directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

Ten days' notice of the time and place of taking such deposition shall be given, by the party in whose behalf such deposition is to be taken, to the adverse party.

**Rule 24.** The officer before whom such deposition is taken shall cause each interrogatory to be written out, and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

Vol. 25, 143.



Rule 25. The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be inclosed in a sealed package, indorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the Register and Receiver, who will indorse thereon the date of reception thereof, and the time of opening said deposition.

Vol. 10, page 340; vol. 11, 183.

Rule 26. If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

Rule 27. Deposition may, by stipulation filed with the Register and Receiver, be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

Vol. 1, 132; vol. 16, 98; vol. 15, 263, 34, 180.

Rule 28. Testimony may, by order of the Register and Receiver and after such notice as they may direct, be taken by deposition before a United States commissioner, or other officer authorized to administer oaths near the land in controversy, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the Register and Receiver in the like manner as is provided with reference to depositions.

Rule 29. No charge will be made by the Register and Receiver for examining testimony taken by deposition.

Rule 30. Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by Registers and Receivers.

Rule 31. When the officer designated to take deposition can not act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

Rule 32. No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

Vol. 1, page 132, 474; vol. 2, 66, 231, 234, 235; vol. 3, 112, 145, 194, 333; vol. 4, 91, 440, 541; vol. 5, 365; vol. 7, 315; vol. 9, 209, 273; vol. 10, 433, 480; vol. 11, 418, 539; vol. 12, 30; vol. 13, 203; vol. 14, 700; vol. 15, 289, 436; vol. 16, 88, 360, 511; vol. 17, 4, 321; vol. 18, 78; vol. 20, 18; vol. 23, 140; vol. 24, 564; vol. 25, 466; vol. 28, 301.

#### **Trials.**

Rule 33. The Register and Receiver and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

Rule 34. The Register and Receiver will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officers should, whenever necessary, personally interrogate and direct the examination of a witness.

Vol 2, 234, 235; vol. 3, 86; vol. 16, 511.

Rule 35. In preemption cases the Register and Receiver will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of their office.

Vol. 3, 86.

Rule 36. In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

Rule 37. Due opportunity will be allowed opposing claimants to cross-examine witnesses.

Vol. 11, 421; vol. 14, 472.

Rule 38. Objections to evidence will be duly noted, but not ruled upon, by the Register and Receiver, and such objections will be considered by the Commissioner. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

Land decisions: Vol. 1, page 107; vol. 2, 232, 581; vol. 4, 386; vol. 9, 131, 134; vol. 10, 628, 680; vol. 11, 461; vol. 12, 109; vol. 18, 560; vol. 21, 55, 480; vol. 22, 314.

Rule 39. At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: Provided, however, That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

Vol. 2, page 581; vol. 4, 541; vol. 7, 292; vol. 12, 186; vol. 17, 135; vol. 19, 339; vol. 28, 301.

Rule 40. If a defendant demurs to the sufficiency of the evidence, the Register and Receiver will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

When testimony is taken before an officer other than the Register and Receiver, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the Register and Receiver will rule upon such demurrer when the record is submitted for their consideration.



If said demurrer is sustained, the Register and Receiver will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

Upon the completion of the evidence in a contest proceeding, the Register and Receiver will render joint report and opinion thereon, making full and specific reference to the posting and annotations upon their records.

Rule 41. The Register and Receiver will, in writing, notify the parties to any proceeding of the conclusion therein, and that fifteen days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, thirty days will be allowed from the receipt of such notice within which to appeal to the Commissioner.

Vol. 1, page 117, 118, 472, 479; vol. 2, 387; vol. 3, 184; vol. 5, 246; vol. 6, 765; vol. 7, 388; vol. 28, 317; vol. 29, 142; vol. 30, 622.

#### **New Trial.**

Rule 42. The decision of the Register and Receiver will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: Provided, however, That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

No appeal will be allowed from an order granting new trial, but the Register and Receiver will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony theretofore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

Rule 43. Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the Register and Receiver not more than fifteen days after notice of decision; the adverse party shall, within ten days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

Rule 44. Motions for new trial will not be considered or decided in the first instance by the Commissioner or the Secretary of the Interior, or otherwise than on review of the decision thereof by the Register and Receiver.

Rule 45. If motion for new trial is not made, or if made and not allowed, the Register and Receiver will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the Commissioner, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

The local officers will not, after forwarding of decision, as above provided, take further action in the case unless so instructed by the Commissioner.

#### **Final Proof Pending Contest.**

Rule 46. Where a trial of a contest brought against any entry or filing has taken place, the entryman may submit final proof and

complete the same, with the exception of payment of the purchase money or commission, as the case may be; such final proof will be retained in the local office, and, should the entry be adjudged valid, will, if satisfactory, be accepted upon payment of the purchase money or commissions, and final certificate will issue without further action on the part of the entryman, except the furnishing by him, or in case of his death by his legal representatives, of non-alienation affidavit.

In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

#### **Appeals to Commissioner.**

**Rule 47.** No appeal from the action or decision of the Register and Receiver will be considered unless notice thereof is served and filed with the local officers in the manner and within the time specified in these rules.

Vol. 1, page 472; vol. 11, 408; vol. 14, 702; vol. 18, 421; vol. 2, 169; vol. 3, 184, 608; vol. 4, 277, 571.

**Rule 48.** Notice of appeal from the decision of the Register and Receiver shall be served and filed with such Register and Receiver within thirty days after receipt of notice of decision: Provided, however, That when motion for new trial is presented and denied, notice of such appeal shall be served within fifteen days after receipt of notice of the denial of said motion.

**Rule 49.** No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the Register and Receiver.

**Rule 50.** Such notice of appeal must be in writing, and set forth in clear, concise language, the grounds of the appeal; if such appeal be taken upon the ground of insufficiency of the evidence to justify the decision, the particulars of such insufficiency must be specifically set forth in the notice, and, if error of law is urged as a ground for such appeal, the alleged error must be likewise specified.

Upon failure to serve and file notice of appeal as herein provided the case will be closed.

**Rule 51.** When any party fails to move for a new trial or to appeal from the decision of the Register and Receiver within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of—

(a) Fraud or gross irregularity.

(b) Disagreement in the decision between the Register and Receiver.

No case will be remanded for any defect which does not materially affect the aggrieved party.

Vol. 5, page 212, 246, 448, 585, 624; vol. 6, 99, 359, 391, 426; vol. 7, 20, 98; vol. 9, 389, 627; vol. 10, 680, 690; vol. 11, 260, 300, 400, 407, 631; vol. 12, 421; vol. 13, 495, 605, 686; vol. 14, 238; vol. 15, 37, 291, 400; vol. 17, 145; vol. 18, 153, 306, 401, 431, 594; vol. 19, 572; vol. 20, 41, 456, 516; vol. 21, 281, 295, 307, 523; vol. 22, 6, 16, 67, 512, 641; vol. 23, 562; vol. 24, 244, 385; vol. 25, 305, 315, 345; vol. 27, 143; vol. 28, 317.

**Rule 52.** All documents received by the local officers must be kept on file and the date of filing noted thereon; no papers will,



under any circumstances, be removed from the files or from the custody of the Register and Receiver, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

Vol. 4, 246; vol. 40, 130.

#### **Costs and Apportionment Thereof.**

**Rule 53.** A contestant claiming preference right of entry under the second section of the Act of May 14, 1880 (21 Stat., 140), must pay the costs of contest; in other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses. The cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

Vol. 4, page 207; vol. 6, 600, 765; vol. 8, 494; vol. 10, 628, 680; vol. 11, 389; vol. 12, 109; vol. 13, 290; vol. 14, 92; vol. 19, 383, 428, 445; vol. 20, 153, 197, 276; vol. 22, 189, 248, 314, 420; vol. 24, 90; vol. 25, 13; vol. 26, 211, 384; vol. 30, 12.

**Rule 54.** Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

Land decisions: Vol. 3, page 52; vol. 4, 207; vol. 9, 134; vol. 10, 628, 680; vol. 12, 109; vol. 18, 560.

**Rule 55.** Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the preemption, homestead, or desert-land laws by virtue of settlement and improvement without reference to the Act of May 14, 1880, the costs of contest will be imposed as prescribed in the second clause of Rule 53.

Vol. 6, page 661; vol. 26, 211.

**Rule 56.** The only cost of contest chargeable by Registers and Receivers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

**Rule 57.** Registers and Receivers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

Vol. 2, page 223; vol. 6, 599; vol. 8, 494; vol. 20, 276.

**Rule 58.** Upon the filing of the transcript of the testimony in the local office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

**Rule 59.** When hearings are ordered on behalf of the Government, all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by Rule 53.

**Rule 60.** The costs provided for by the preceding rules will be

collected by the receiver when the parties are brought before him in obedience to the order for hearing.

Rule 61. The Receiver will append to the report in each case a statement of costs, the amount actually paid by each of the parties, and the disposition thereof.

Rule 62. All notices and other papers not required to be served by the Register and Receiver must be prepared and served by the respective parties.

Rule 63. The Register and Receiver will require proper provision to be made for such notices not specifically provided for in these rules as may become necessary in the usual progress of the case to final decision.

#### **Appeal from Decision Rejecting Application to Enter Public Lands.**

Rule 64. To facilitate appeals from the action of local officers relative to applications to file, enter, or locate upon the public lands, the Register and Receiver will—

(a) Indorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of their action and of his right of appeal.

(c) Note upon their records a memorandum of the transaction.

Vol. 2, page 278, 280; vol. 3, 281; vol. 4, 9; vol. 5, 380; vol. 12, 235, 684; vol. 14, 661; vol. 16, 112; vol. 18, 8; vol. 20, 537; vol. 22, 25.

Rule 65. The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the local land office. The notice of appeal, when filed, will be forwarded to the General Land Office with full report upon the case, which should recite all the facts and proceedings had, and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the local office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

Vol. 2, page 80; vol. 7, 388; vol. 13, 250; vol. 16, 112; vol. 20, 386.

## **II.**

### **PROCEEDINGS BEFORE SURVEYORS GENERAL.**

Rule 66. The proceedings in hearings and contests before surveyors general shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before Registers and Receivers, unless otherwise provided by law.

## **III.**

### **PROCEEDINGS BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE AND SECRETARY OF THE INTERIOR.**

#### **Examination and Argument.**

Rule 67. The Commissioner will cause notice to be given to each party in interest whose address is known of any order or



decision affecting the merits of the case or the regular order of proceedings therein.

Rule 68. No additional evidence will be admitted or considered by the Commissioner unless offered under stipulations of the parties or in support of a mineral application or protest; provided, however, that the Commissioner may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the Commissioner will not be considered in finally determining any controversy upon the merits.

Rule 69. After receipt of the record by the Commissioner thirty days will be allowed to expire before any action is taken thereon, unless, in the judgment of the Commissioner, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do; provided, that where no appeal has been filed the case may be immediately considered and disposed of.

Rule 70. If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the Commissioner therefor.

Rule 71. In the discretion of the Commissioner, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

#### **Rehearings.**

Rule 72. No motion for rehearing of any decision rendered by the Commissioner of the General Land Office will be allowed.

#### **Motions.**

Rule 73. No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

In ex parte cases, where the entryman has been allowed by the Commissioner to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the Commissioner shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

#### **Appeal from the Commissioner to the Secretary.**

Rule 74. Except as herein otherwise provided, an appeal may be taken to the Secretary of the Interior from the final decision of the Commissioner in any proceeding relating to the disposal of the public lands and private claims.

Rule 75. No appeal shall be had from the action of the Commissioner affirming the decision of the local officers in any case where the party adversely affected shall have failed to appeal from the decision of said local officers.

Vol. 4, page 559, 162, 270, 277, 285, 314; vol. 5, 59, 175, 253, 625; vol. 6, 772, 804; vol. 7, 358, 405; vol. 8, 373; vol. 9, 389; vol. 10, 252; vol. 13, 279, 348, 707, 721; vol. 14, 698; vol. 15, 188; vol. 17, 509, 578; vol. 18, 419; vol. 19, 34, 382; vol. 21, 555; vol. 22, 641.

**Rule 76.** Notice of appeal from the Commissioner's decision must be served upon the adverse party and filed in the office of the Register and Receiver or in the General Land Office within thirty days from the date of service of notice of such decision.

Vol. 1, page 464, 473; vol. 2, 375, 715, 719; vol. 3, 135; vol. 4, 226, 244, 551; vol. 6, 124, 240; vol. 9, 189, 265, 278; vol. 10, 409; vol. 13, 697; vol. 14, 428; vol. 16, 125; vol. 17, 146, 482; vol. 18, 138, 411; vol. 19, 34, 295; vol. 20, 89, 411; vol. 23, 413; vol. 24, 277; vol. 25, 417; vol. 27, 54, 33, 40.

**Rule 77.** When the Commissioner considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

**Rule 78.** In proceedings before the Commissioner in which he shall decide that a party has no right to appeal to the secretary, such party may apply to the secretary for an order directing the Commissioner to certify said proceedings to the secretary and suspend action until the secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

Vol. 1, page 570, 628; vol. 2, 68, 419, 769; vol. 4, 53, 226, 314, 558; vol. 5, 255, 507, 673; vol. 10, 252, 690; vol. 11, 260; vol. 12, 259, 397, 478, 635, 722; vol. 14, 176; vol. 15, 191, 244, 527; vol. 16, 125; vol. 17, 100; vol. 18, 420; vol. 19, 32, 333; vol. 20, 178, 287; vol. 21, 122; vol. 30, 17; vol. 33, 40, 517; vol. 40, 87, 299.

**Rule 79.** When the Commissioner shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the secretary for an order certifying the record as hereinabove provided.

Vol. 10, page 690; vol. 15, 244, 527; vol. 18, 41; vol. 19, 333; vol. 20, 287; vol. 24, 385.

**Rule 80.** The appellant will be allowed 20 days after service of notice of appeal within which to serve and file brief and specification of error, as provided by Rule 50, the adverse party 20 days after service of such within which to serve and file reply thereto; appellant will be allowed 10 days after service of such reply within which to serve and file response: Provided, however, That if either party is not represented by counsel having offices in the city of Washington, 10 days in addition to each period above specified will be allowed within which to serve and file the respective briefs.

No arguments otherwise than above provided shall be made or filed without permission of the secretary or Commissioner granted upon notice to the adverse party.

Vol. 40, page 131.

**Rule 81.** Examination of cases will be facilitated by filing arguments in printed form.

#### **Oral Argument Before the Secretary.**

1. Rule 82 is hereby amended to read as follows:



Rule 82. Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour unless an extension of time is ordered before the argument begins.

Rule 83 of the rules of practice in cases before the United States district land offices, General Land Office, and the Department of the Interior, approved December 9, 1910, as amended November 6, 1911, is hereby amended to read as follows:

Rule 83. A motion for rehearing of a cause by the Secretary of the Interior, together with all papers used in connection therewith, must be in writing, and must, together with evidence of service thereof on the adverse party, be filed with the Secretary of the Interior within 30 days after service of notice of the decision in said cause.

Said motion must state concisely and specifically the grounds upon which such rehearing is asked and may be accompanied by written argument in support thereof. No matters other than those specified will be considered.

The adverse party will be allowed 15 days after the service of the motion upon him in which to serve and file with the Secretary of the Interior a reply to the motion.

In case no such motion be filed within the period above prescribed the record will at once be transmitted to the Commissioner of the General Land Office for execution of the judgment of the Secretary. Like action will be taken immediately after the judgment of the Secretary on any motion for rehearing.

No oral argument will be allowed on any such motion, and this rule will be strictly adhered to. If the motion be granted, the Secretary will at once proceed to dispose of the case, or, in his discretion, if the motion, or the reply thereto, has been accompanied by a request for oral argument in the event of its being granted, will set the cause down for oral argument. In any case, however, if the motion be granted, the Secretary may set the cause down for oral argument.

Rule 83, as hereby amended, will take effect and be in full force on and after December 15, 1911.

Dated this 16th day of November, A. D. 1911.

Vol. 4, pages 53, 275, 314, 495, 508; vol. 5, 235, 422; vol. 6, 6, 796; vol. 12, 423; vol. 13, 34; vol. 14, 683; vol. 16, 261; vol. 17, 194; vol. 19, 104, 584; vol. 20, 407, 419; vol. 22, 671; vol. 23, 244, 406; vol. 26, 443; vol. 34, 573.

#### **Motions for Review and Rereview.**

Rule 84. Motions for review and rereview are hereby abolished.

#### **Supervisory Power of Secretary.**

Rule 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

Rule 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

#### **Attorneys.**

Rule 87. Every attorney before practicing before the Department of the Interior must first file the oath prescribed by section 3478 of the Revised Statutes.

Vol. 1, page 120; vol. 3, 18, 409, 608; vol. 4, 9; vol. 11, 395, 441; vol. 15, 308; vol. 16, 261; vol. 20, 89; vol. 25, 36; vol. 39, 161.

**Rule 88.** In all cases where any party is represented by attorney such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

Where a party is represented by more than one attorney service of notice or other papers upon one of said attorneys shall be sufficient.

**Rule 89.** No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and postoffice address and the name and postoffice address of the party whom he represents.

**Rule 90.** Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the Department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

Vol. 1, page 120; vol. 3, 18, 409, 608; vol. 4, 9; vol. 11, 441; vol. 15, 308; vol. 16, 261; vol. 20, 89; vol. 25, 36, 39, 161.

**Rule 91.** Verbal or other inquiries by parties or counsel directed to any employee of the Department, except the Commissioner, Assistant Commissioner, or Chief of Division of the General Land Office, of the Secretary and Assistant Secretary, the Assistant Attorney General, or the first assistant attorney in the offices of the Secretary of the Interior, or with the consent of one or more of said officers, is expressly forbidden.

**Rule 92.** Abuse of the privilege of examining records of the Department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

#### **Service of Notices.**

**Rule 94.** Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the General Land Office, except in case of notice of resident attorneys, in which case one day will be allowed.

In computing time for service of papers under these rules of practice the first day shall be excluded and the last day included; provided, however, that where the last day falls on Sunday or a legal holiday, such time shall include the next following business day.

**Rule 95.** Notice of all motions and proceedings before the Commissioner or Secretary shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof.

**Rule 96.** Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are appli-



cable. In such cases the Commissioner or Secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

#### **Intervention.**

Rule 97. No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

These Rules of Practice will be effective on and after February 1, 1911.

Fred Dennett,

Commissioner of the General Land Office.

Approved: December 9, 1910.

R. A. Ballinger,

Secretary.

#### **Regulations Governing the Recognition of Agents and Attorneys Before District Land Officers.**

The following matter relative to attorneys has been taken from the Rules of Practice in force prior to February 1, 1911:

1. An attorney at law who desires to represent claimants or contestants before a district land office must file a certificate, under the seal of a United States, State, or Territorial court for the judicial district in which he resides or the local land office is situated, that he is an attorney in good standing.

2. Any person (not an attorney at law) who desires to appear as an agent for claimants or contestants before a district land office must file a certificate from a judge of a United States court, or of a State or Territorial court having common-law jurisdiction, except probate courts, in the county wherein he resides or the local office is situated, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render clients valuable service, and otherwise competent to advise and assist them in the presentation of their claims or contests.

3. The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed by applicants. In case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

4. An applicant to practice under the above regulations must address a letter to the Register and Receiver, inclosing the certificate and oath above required, in which letter his full name and postoffice address must be given. He must state whether or not he has ever been recognized as an attorney or agent before this Department or any bureau thereof, or any of the local land offices, and, if so, whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office under the Government of the United States.

After an application to practice has been filed in due form, the Register and Receiver will recognize the applicant as an attorney or agent, as the case may be, unless they have good reason to

believe that the person making the application is unfit to practice before their offices, or unless otherwise instructed by the Commissioner or Secretary.

Registers and Receivers must keep a record of the names and residences of all attorneys and agents recognized as entitled to represent clients in their several offices.

Every attorney must, either at the time of entering his appearance for a claimant or contestant or within thirty days thereafter, file the written authority for such appearance, signed by said claimant or contestant, and setting forth his or her present residence, occupation, and postoffice address. Upon a failure to file such written authority within the time limited, it is the duty of the Register and Receiver to no longer recognize him as attorney in the case.

An attorney in fact will be required to file a power of attorney of his principal, duly executed, specifying the power granted and stating the party's present residence, occupation, and postoffice address.

When the appearance is for a person other than a claimant or contestant of record, the attorney or agent will be required to state the name of the person for whom he appears, his postoffice address, the character and extent of his interest in the matter involved, and when and from what source it was acquired. Authorizations and powers signed or executed in blank will not be recognized.

If any attorney or agent shall knowingly commit any of the following acts, viz: Represent fictitious or fraudulent entrymen; prosecute collusive contests; speculate in relinquishments of entries; assist in procuring illegal or fraudulent entries or filings; represent himself as the attorney or agent of entrymen when he is only attorney or agent for a transferee or mortgagee; conceal the name or interest of his client; give pernicious advice to parties seeking to obtain title to public land; attempt to prevent a qualified person from settling upon, entering, or filing for a tract of public land properly subject to such entry or filing, or be otherwise guilty of dishonest or unprofessional conduct, or who, in connection with business pending in local land offices or in this Department, shall knowingly employ as subagent, clerk, or correspondent a person who has been guilty of any one of these acts, or who has been prohibited from practicing before the Register and Receiver or this Department, it will be sufficient reason for his disbarment from practice, and Registers and Receivers are authorized to refuse to further recognize any person as agent or attorney who shall be known to them or be proven before them to be guilty of improper and unprofessional conduct as above stated.

An attorney or agent who has been admitted to practice in any particular land district may be enrolled and authorized to practice in any other district upon filing with the Register and Receiver of such district a certificate of the Register or Receiver before whom he was admitted to practice that he is an attorney or agent in good standing.

Any unprofessional conduct on the part of an attorney or agent should be reported to the Commissioner at once, together with the action of the local land officers in the premises.

Appeals from the action of the Register and Receiver in refusing



to admit to practice or in refusing to further recognize an agent or attorney will lie to the Commissioner and Secretary, as in other appealable cases. (Circular approved March 19, 1887, 5 L. D., 509.)

**Laws and Regulations Governing the Recognition of Agents, Attorneys, and Other Persons to Represent Claimants Before the Department of the Interior and the Bureaus Thereof.**

**1.—Laws.**

The following statutes relate to the recognition of attorneys and agents for claimants before this Department:

“That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, or attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims; and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant or prospective claimant by word, circular, letter, or by advertisement.” (Act July 4, 1884, sec. 5; 23 Stats., 101.)

“Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both.” (Section 5498, Revised Statutes.)

“It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employe in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employe, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employe.” (Section 190, Revised Statutes.)

“Any person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States, shall be required to take the oath of allegiance, and

to support the Constitution of the United States, as required of persons in the civil service." (Section 3478, Revised Statutes.)

"The oath provided for in the preceding section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered." (Section 3479, Revised Statutes.)

The Act of May 13, 1884, sec. 2 (23 Stats., 22), provides that the oath above required shall be that prescribed by section 1757, Revised Statutes, which is as follows:

I, A B, do solemnly swear (affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

## 2.—Regulations.

1. Under the authority conferred on the Secretary of the Interior by the fifth section of the Act of July 4, 1884, it is hereby prescribed that an attorney at law who desires to represent claimants before the Department or one of its bureaus shall file a certificate of the clerk of the United States, State, or Territorial court, duly authenticated under the seal of the court, that he is an attorney in good standing.

2. Any person (not an attorney at law) who desires to appear as agent for claimants before the Department or one of its bureaus must file a certificate from a judge of a United States, State, or Territorial court, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render claimants valuable service, and otherwise competent to advise and assist them in the presentation of their claims.

3. The Secretary may demand additional proof of qualifications, and reserves the right to decline to recognize any attorney, agent, or other person applying to represent claimants under this rule.

4. The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed.

5. In the case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

6. Unless specially called for, the certificate above referred to will not be required of any attorney or agent heretofore recognized and now in good standing before the Department.

7. An applicant for admission to practice under the above regulations must address a letter to the Secretary of the Interior, inclosing the certificate and oath above required, in which letter his full name and postoffice address must be given. He must state whether or not he has ever been recognized as attorney or agent before this Department or any bureau thereof, and, if so, whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office of trust or profit under the Government of the United States.

8. No person who has been an officer, clerk, or employe of this Department within two years prior to his application to appear in



any case pending herein shall be recognized or permitted to appear as an attorney or agent in any such case as shall have been pending in the Department at or before the date he left the service: Provided, This rule shall not apply to officers, clerks, or employes of the Patent Office, nor to cases therein.

9. Whenever an attorney or agent is charged with improper practices in connection with any matter before a bureau of this Department, the head of such bureau shall investigate the charge, giving the attorney or agent due notice, together with a statement of the charge against him, and allow him an opportunity to be heard in the premises. When the investigation shall have been concluded, all the papers shall be forwarded to the Department, with a statement of the facts and such recommendations as to disbarment from practice as the head of the bureau may deem proper, for the consideration of the Secretary of the Interior. During the investigation the attorney or agent will be recognized as such, unless for special reasons the Secretary shall order his suspension from practice.

10. If any attorney or agent in good standing before the Department shall knowingly employ as subagent or correspondent a person who has been prohibited from practice before the Department, it will be sufficient reason for the disbarment of the former from practice.

11. Upon the disbarment of an attorney or agent, notice thereof will be given to the heads of bureaus of this Department, and to the other Executive Departments; and thereafter, until otherwise ordered, such disbarred person will not be recognized as attorney or agent in any claim or other matter before this Department of any bureau thereof.

[In reply please refer to Circular No. 127.]

#### APPLICATIONS TO PRACTICE BEFORE LOCAL OFFICES.

Department of the Interior,  
General Land Office,  
Washington, June 11, 1912.

##### Registers and Receivers.

Sirs: Hereafter whenever there is filed with you an application to practice as agent or attorney before your office you will defer action thereon, advise the Chief of Field Division of the filing thereof, and await his report on the same. Where the Chief of Field Division advises you that there is no objection on his part to the admission of the applicant you will proceed to act upon the same in the usual way and in your report on Form 4-285 to this office you will state that the Chief has reported favorably on the application. In case he reports that he desires to make a report to this office you will further defer action until receipt of advice from this office.

Very respectfully,

Fred Dennett,  
Commissioner.

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2415....31,	223; 33, 626; 35, 484; 36, 254.....	
2418....35,	629.....	
2423....10,	357.....	
2436....33,	628.....	
2441....30,	342; 34, 611; 36, 13.....	
2444....35,	628; 38, 562.....	
2447....2,	365; 4, 130; 6, 149; 11, 149; 17, 25; 22, 145.....	
2448....13,	50; 20, 174; 21, 377; 23, 136, 457; 25, 2; 26, 243, 562; 27, 672; 32, 409; 36, 250; 39, 576.....	
2449....2,	457, 496; 3, 498; 12, 391; 18, 474; 23, 461; 24, 228, 364, 396, 486; 25, 22; 26, 629; 27, 329; 30, 234.....	
2450....1,	411; 3, 141; 4, 156; 8, 91; 9, 231; 14, 407; 15, 258; 18, 97; 21, 550; 26, 678; 29, 713; 34, 40; 35, 381; 37, 158; 38, 413; 39, 320.....	
2451....3,	141; 15, 258; 18, 97; 34, 40; 35, 381; 37, 158; 40, 74.....	
2452....15,	278; 18, 97; 34, 40; 35, 381; 37, 158.....	
2453....15,	258; 18, 97; 34, 40; 35, 381; 27, 158.....	
2454....15,	258; 18, 97; 34, 40; 35, 381; 37, 158.....	
2455....2,	242, 603, 608; 3, 149; 8, 428; 9, 529; 10, 615; 12, 397; 14, 458; 15, 258; 15, 491; 16, 497; 17, 330; 18, 91; 19, 48; 20, 120, 237, 255, 305, 407; 21, 183, 454; 23, 590; 24, 296; 25, 146, 159; 26, 331, 607, 676, 699; 27, 45, 490, 617, 715; 28, 214; 29, 153, 320, 347, 378, 486; 30, 537; 31, 201, 247; 33, 447; 34, 40, 357; 35, 381, 44, 294, 412, 418, 452, 518,	



- 582, 646, 647; 36, 216; 37, 158, 108, 209, 453; 38, 85, 119, 139, 484; 39, 10, 322; 40, 364, 373, 374, amended... 359
- 2456....6, 314; 8, 183; 15, 258; 18, 97; 34, 40; 35, 381; 37, 158.
- 2457....1, 79, 411, 280; 3, 190; 4, 156, 350; 5, 514; 8, 91; 10, 299; 15, 258; 15, 121; 18, 97; 19, 445; 20, 504; 25, 503; 26, 687; 29, 713; 34, 40; 35, 381, 436; 37, 158.
- 2461....12, 457; 13, 150; 24, 168; 26, 402, 406; 29, 323, 574; 31, 268; 32, 445; 36, 303.
- 2476....4, 418.
- 2477....21, 351; 25, 446; 31, 407.
- 2478....5, 573, 673; 8, 91; 14, 317; 26, 40; 27, 8, 360; 31, 158, 300, 306, 348; 35, 534; 36, 523; 38, 61.
- 2479....7, 243; 8, 71; 10, 46; 11, 37; 35, 509.
- 2480....19, 286.
- 2481....8, 52.
- 2482....1, 506; 3, 396, 572, 585; 5, 638; 10, 446.
- 2483....3, 572; 7, 243.
- 2484....3, 396, 572; 8, 387; 10, 46.
- 2488....1, 312; 3, 522; 4, 371; 5, 37, 100; 6, 684; 13, 130; 14, 248, 253; 23, 230; 24, 27, 69; 26, 94; 30, 574; 31, 305, 307, 309.
- 2490....5, 102; 23, 308; 30, 395.
- 3220....5, 574.
- 3229....5, 240.
- 3477....14, 101; 17, 217; 21, 366; 30, 5, 435; 36, 390, 564; 38, 471; 39, 145, 148.
- 3478....3, 114; 5, 388, 508.
- 3479....5, 388.
- 3469....5, 240.
- 3617....1, 521; 35, 570.
- 3631....23, 480.
- 3689....24, 540.
- 3732....19, 379.
- 3743....40, 140, 142.
- 3744....40, 140, 141, 142.
- 3745....40, 140, 143.
- 3746....40, 140, 143.
- 3747....40, 140, 143.
- 3679....1, 538; 19, 379.
- 3690....18, 194; 19, 373.
- 3831....9, 551.
- 5013....2, 681.
- 5182....2, 658.
- 5263....26, 572; 29, 2.
- 5264....29, 2.
- 5265....29, 2.
- 5266....29, 2.
- 5267....29, 2.
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- 5388....30, 24.
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- 5440....4, 469.
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- 5492....37, 495.
- 5498....4, 55; 5, 237; 22, 435; 33, 654.
- 5595....1, 413.
- 5596....1, 418; 2, 604, 609; 30, 574.

### INSTRUCTIONS GOVERNING REPAYMENTS.

Department of the Interior,  
General Land Office,  
Washington, D. C., July 23, 1910.

To Registers and Receivers of United States Land Offices.

Gentlemen: Your attention is called to the following provisions of the Act of Congress approved June 16, 1880 (21 Stat., 287), entitled "An Act for the relief of certain settlers on the public lands, and to provide for the payment of certain fees, purchase money, and commissions paid on void entries of public lands":

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where it shall, upon due proof being made, appear to the satisfaction of the Secretary of the Interior that innocent parties have paid the fees and commissions and excess payments required upon the location of claims under the act entitled "An Act to amend an act entitled 'An Act to enable honorably discharged soldiers and sailors, their widows and orphan children, to acquire homesteads on the public lands of the United States,' and amendments thereto," approved March third, eighteen hundred and seventy-three, and now incorporated in section twenty-three hundred and six of the Revised Statutes of the United States, which said claims were, after such location, found to be fraudulent and void, and the entries or locations made thereon canceled, the Secretary of the Interior is authorized to repay to such innocent parties the fees and commissions and excess payments paid by them, upon the surrender of the receipts issued therefor by the receivers of public moneys, out of any money in the Treasury not otherwise appropriated, and shall be payable out of the appropriation to refund purchase money on lands erroneously sold by the United States.

Sec. 2. In all cases where homestead or timber-culture or desert-land entries or other entries of public lands have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry has been erroneously allowed and can not be confirmed, the Secretary of the Interior shall cause to be repaid to the person who made such entry, or to his heirs or assigns, the fees and commissions, amount of purchase money, and excesses paid upon the same, upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said land, whenever such entry shall have been duly canceled by the Commissioner of the General Land Office, and in all cases where parties have paid double-minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of one dollar and twenty-five cents per acre shall in like manner be repaid to the purchaser thereof, or to his heirs or assigns.

Sec. 3. The Secretary of the Interior is authorized to make the payments herein provided for out of any money in the Treasury not otherwise appropriated.

Sec. 4. The Commissioner of the General Land Office shall make all necessary rules, and issue all necessary instructions, to carry the provisions of this act into effect; and for the repayment of the purchase money and fees herein provided for the Secretary of the Interior shall draw his warrant on the Treasury and the same shall be paid without regard to the date of cancellation of the entries.

The foregoing act is additional to the provisions of sections 2362 and 2363, United States Revised Statutes.

### APPLICATIONS.

1. Applications for repayment of fee, commissions, excess and purchase money should be made in the following or equivalent form:  
To the Commissioner of the General Land Office.

Sir: I hereby make application for repayment of the purchase money paid on entry of the ..... of section ....., township ....., range ....., as per certificate No. ...., issued at ....., bearing date the ..... day of ....., 1....

(Applicant sign here. Give P. O. address.) .....  
.....

State of ....., County of ....., ss.

On this ..... day of ....., 19.., before the subscriber, a ..... in and for said county, personally came ....., to me well known to be the person who subscribed the foregoing application, who, being duly sworn, on ..... oath, declares that ..... has not sold, assigned, nor in any manner encumbered, the title to the tract of land described in said application, and that the same has not become a matter of record.

(Applicant sign here.) .....  
.....

Subscribed and sworn to before me this ..... day of ....., A. D. 19..  
.....

The affidavit may be made before the register or receiver, or any officer authorized to administer oaths. When made before a justice of the peace, a certificate of official character is required.



## FEES, COMMISSIONS, EXCESSES, ETC.

On fraudulent and void additional soldier and sailor entries.

2. The first section of the act authorizes the payment "to innocent parties" of the fees, commissions, etc., paid by them on fraudulent and void additional soldier and sailor homestead entries which have been canceled.

Repayment of fees, commissions, and excesses under section 1 can be made only to the party who paid the same. A conveyance of the land in these cases will not be deemed to carry with it the right to repayment.

Applications for repayment under this section must be accompanied by the duplicate receipt, or evidence of the loss of the same, and by a concise statement under oath setting forth all the facts and circumstances connected with the procurement and use of the fraudulent papers upon which the canceled entries were based, together with such documentary or other proof as may tend to establish the innocence of the parties relative thereto.

On entries canceled for conflict, or where the same have been erroneously allowed and can not be confirmed.

The first clause of the second section of the act provides:

3. For the repayment of purchase money and of fees, commissions, and excess payments, where entries of public lands are canceled for conflict, "or where, from any cause, the entry has been erroneously allowed and can not be confirmed."

In the case of applications for the payment of fees, commissions, etc., on canceled homestead and other entries, under the second section of the act, the duplicate receipt or duplicate certificate must be surrendered, together with a relinquishment in the following or equivalent form:

I hereby relinquish to the United States all my right, title, and claim in and to the land described in receipt No. ...., issued at ....., 1..., being for the ..... of section ....., township ....., and range .....

Witness:

.....  
.....

Acknowledged before me this ..... day of ....., 19..

This relinquishment may be acknowledged before the register or receiver or before any officer authorized to take acknowledgments.

4. If the duplicate receipt or duplicate certificate has been lost or destroyed, an affidavit stating the fact must be furnished, together with a relinquishment in effect as in the above form.

## DOUBLE-MINIMUM EXCESS.

The last clause of the second section of the act provides that "in all cases where parties have paid double-minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of \$1.25 per acre shall in like manner be repaid to the purchaser thereof or to the heirs or assigns."

5. Applications for repayment of double-minimum excess should be made in the following form:

To the Commissioner of the General Land Office.

Sir: ..... hereby make application for repayment of the double-minimum excess paid on entry of the ..... of section ....., township ....., range ....., as per certificate No. ...., issued at ....., bearing date the ..... day of ....., 1....

(Applicant sign here. Give P. O. address.) ..... ,

County of ....., State of ....., ss.

On this ..... day of ....., 19.., before the subscriber, a ..... in and for said county, personally came ....., to me well known to be the person who subscribed to the foregoing application, who, being duly sworn, on ..... oath declares that ..... has not sold or assigned ..... right in any way to the double-minimum excess described in said application.

(Applicant sign here.) ..... ,

Subscribed and sworn to before me this ..... day of ....., A. D. 19..

.....  
.....

6. The applicant must also furnish a corroborated affidavit showing that he is the identical party who made the entry on which repayment is claimed. Repayment of double-minimum excess will be made only to the original entryman, his heirs or assigns. The sale and transfer of the land is not of itself treated as an assignment of the right to receive repayment of double-minimum excess.

### PURCHASE MONEY.

Where patent has not been issued, and the title has not otherwise become a matter of record.

7. In applications for repayment where patent has not issued, the duplicate receipt or duplicate certificate must be surrendered. The applicant must make affidavit that he has not transferred or otherwise encumbered the title to the land and that the same has not become a matter of record.

Where the duplicate receipt or duplicate certificate has been lost or destroyed, a certificate will also be required from the proper recording officer, showing that the same has not become a matter of record and that there is no incumbrance of the title to the land thereunder. A like certificate must be furnished when the application is made by another than the original purchaser.

Where title has become a matter of record.

8. Where the title has become a matter of record, and in all cases where patent has issued, a duly executed deed, relinquishing to the United States all right and claim to the land under the entry or patent, must accompany the application. This deed must be duly recorded, and a certificate must also be produced from the proper recording officer where the land is situated, showing that said deed is so recorded and that the records of his office do not exhibit any other conveyance or incumbrance of the title to the land.

Where a valid title to the land embraced in a canceled entry has been conveyed by the Government to other parties, the applicant for repayment under such canceled entry must reconvey to the United States the title derived from such invalid entry. If, however, the applicant has acquired the valid title already conveyed by the United States, it will not be necessary for him to reconvey the land, but he may make a full statement, with corroborative evidence of the facts, waiving all claim under the invalid entry, and thereupon receive repayment of the amount erroneously paid.

The reconveyance to the United States must conform in every particular to the laws of the State or Territory in which the land is located relative to transfers of real property; in the case of a married man, in localities where the right of dower exists, there must be a release of dower by the wife, and in case of an executor or administrator, due proof of authority to alienate the estate.

Where a patent has been executed and delivered it must be surrendered.

### HEIRS, EXECUTORS, ADMINISTRATORS, AND ASSIGNEES.

9. Where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained, and must show that the parties applying are the heirs and the only heirs of the deceased.

10. Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

11. Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

12. Where applications are made by assignees, the applicants must show their right to repayment by furnishing properly authenticated abstracts of title, or the original deeds or instruments of assignment, or certified copies thereof, and also show by affidavits or otherwise that they have not been indemnified by their grantors or assignors for the failure of title, and that title has not been perfected in them by their grantors through other sources.

13. Where there has been a conveyance of the land and the original purchaser applies for repayment, he must show that he has indemnified his assignee or perfected the title in him through another source, or produce a full reconveyance to himself from the last grantee or assignee.

### ASSIGNEES.

Those persons are assignees, within the meaning of the statutes authorizing the repayment of purchase money, who purchase the land after the



entries thereof are completed and take assignments of the title under such entries prior to complete cancellation thereof, when the entries fail of confirmation for reasons contemplated by the law. To construe said statutes so as to recognize the assignment or transfer of the mere claim against the United States for repayment of purchase money, or fees and commissions, disconnected from a sale of the land or attempted transfer of title thereto, would be against the settled policy of the Government and repugnant to section 3477 of the Revised Statutes. (2 Lawrence, First Comp. Dec., 264, 266, and 6 Dec. Comp. of the Treasury, 334, 359.)

Assignees of land who purchase after entry are, in general, deemed entitled to receive the repayment when the lands are found to have been erroneously sold by the Government. But this rule does not apply to the repayment of double-minimum excesses. (First Comp. Dec. in case of Adrian B. Owens, Copp's Pub. Land Laws, 1890, vol. 2, p. 1238.)

#### DEFINITION OF "ERRONEOUSLY ALLOWED."

This can not be given an interpretation of such latitude as would countenance fraud. If the records of the Land Office, or the proofs furnished, should show that the entry ought not to be permitted, and yet it was permitted, then it would be "erroneously allowed." But if a tract of land were subject to entry, and the proofs showed a compliance with law, and the entry should be canceled because the proofs were shown to be false, it could not be held that the entry was "erroneously allowed"; and in such case repayment would not be authorized.

#### TRANSMITTAL OF APPLICATIONS.

14. Applications for repayment may be filed either in this office or in the proper district land office.

When an application is filed in the district land office the register and receiver shall transmit the same with a full report of the facts in the case, as shown by their official records, and recommend either the allowance or the disallowance of the claim. When an application is filed, either in the district land office or in this office, it should be accompanied by a statement setting forth fully the grounds upon which repayment is claimed.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved July 23, 1910.

Frank Pierce,  
Acting Secretary.

#### INSTRUCTIONS UNDER ACT OF MARCH 26, 1908.

Department of the Interior,  
General Land Office,  
Washington, D. C., July 23, 1910.

To Registers and Receivers of United States Land Offices.

Gentlemen: Your attention is called to the following provisions of the Act of Congress approved March 26, 1908 (35 Stat., 48), entitled "An Act to provide for the repayment of certain commissions, excess payments, and purchase moneys paid under the public land laws":

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representatives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application.

Sec. 2. That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payments to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

Sec. 3. That when the Commissioner of the General Land Office shall ascertain the amount of any excess moneys, purchase moneys, or commissions

in any case where repayment is authorized by this statute, the Secretary of the Interior shall at once certify such amounts to the Secretary of the Treasury, who is hereby authorized and directed to make repayment of all amounts so certified out of any moneys not otherwise appropriated and issue his warrant in settlement thereof.

The foregoing act is additional to the provisions of sections 2362 and 2363, United States Revised Statutes, and to the Act of June 16, 1880 (21 Stat., 287).

The first section authorizes the return to the applicant, or to his legal representatives, of purchase moneys and commissions covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, where such application has been or shall hereafter be rejected, in cases where neither the applicant nor his or her legal representatives shall have been guilty of any fraud or attempted fraud in connection with said application.

This section refers more particularly to moneys covered into the Treasury of the United States as directed in office circular "M" of May 16, 1907 (35 L. D., 568), and circular letter "M" of July 26, 1907; that is, moneys deposited with proof under the timber and stone, desert land, coal land, or mineral land laws.

#### APPLICATIONS.

Applications for repayment under this section should be made in the following or equivalent form:

To the Commissioner of the General Land Office.

Sir: I hereby make application for the return of the purchase money and commissions paid with my ..... under the ..... law, for the ..... of section ....., township ....., range ....., as per receiver's receipt No. ...., issued at ....., bearing date the ..... day of ....., 19.., and which is surrendered herewith, and on oath declare that I am the identical (or legal representative of the) person who made said payment, and that there was no fraud or attempted fraud in connection with the effort to obtain title to the described tract of land. \*.....

\* If the receipt has been lost or destroyed, so state.

(Applicant sign here.) ..... ,

(P. O. address.) ..... ,

State of ....., County of ....., ss.

Subscribed and sworn to before me this ..... day of ....., 19..

The affidavit may be made before the register or receiver, or any officer authorized to administer oaths. When made before a justice of the peace, a certificate of official character is required.

The second section authorizes the return to the person who made the payment, or to his legal representatives, of any moneys paid under any of the land laws of the United States, in excess of the legal requirements.

#### APPLICATIONS.

Applications for repayment under this section should be made in the following or equivalent form:

To the Commissioner of the General Land Office.

Sir: I hereby make application for the return of the amount paid in excess of the lawful requirements on entry of the ..... of section ....., township ....., range ....., as per receiver's receipt No. ...., issued at ....., bearing date the ..... day of ....., 19.., and on oath declare that I am the identical (or legal representative of the) person who made said payment.

(Applicant sign here.) ..... ,

(P. O. address.) ..... ,

State of ....., County of ....., ss.

Subscribed and sworn to before me this ..... day of ....., 19..

Affidavits in this class of claims may also be made before the register



or receiver, or any officer authorized to administer oaths. When made before a justice of the peace, a certificate of official character is required.

### HEIRS, EXECUTORS, AND ADMINISTRATORS.

Where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained, and must show that the parties applying are the heirs and the only heirs of the deceased.

Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

Section 3477, United States Revised Statutes, prohibits the transfer or assignment of claims against the United States, and, therefore, any attempted transfer or assignment of a claim under either of the before-mentioned sections can not be recognized.

### TRANSMITTAL OF APPLICATIONS.

Applications for repayment may be filed either in this office or in the proper district land office.

When an application is filed in the district land office the register and receiver shall transmit the same with a full report of the facts in the case, as shown by their official records, and recommend either the allowance or the disallowance of the claim.

The third section of the act directs the Secretary of the Interior to at once certify to the Secretary of the Treasury the amount of any excess moneys, purchase moneys, or commissions, ascertained by the Commissioner of the General Land Office to be due under this act, and the Secretary of the Treasury is authorized and directed to make repayment of all amounts so certified out of any moneys not otherwise appropriated and to issue his warrant in settlement thereof.

### CREDIT FOR PRIOR PAYMENT IN SECOND APPLICATION TO COMMUTE.

In cases where the commutation homestead proof, upon which you have issued certificate and receipt, has been rejected by this office, the certificate canceled and the original entry allowed to stand subject to future compliance with the law, if second commutation proof is accepted and credit is allowed for the purchase money paid on the first proof, the register will issue his certificate, bearing proper number and date, noting thereon:

"Purchase money, \$.... paid, ....., 19.., per receiver's receipt No. ...."

The receiver will show on his "Abstract of collections on commuted homesteads" the date of the register's certificate, the name of the entryman, and the purchase money in the proper columns, in ( ), with the above notation on a separate line. The amount will not be included in the footing.

The receiver will issue receipt (Form 4-131) for testimony fees paid on the second proof, with notation to show that the "purchase money was paid ....., 19.., per receiver's receipt No. ...."

Before allowing credit on account of payment in a prior canceled cash entry, as hereinbefore set forth, the register and receiver are charged with the duty of securing the approval of the Commissioner of the General Land Office therefor.

Very respectfully,

Approved July 23, 1910.

Frank Pierce,

Acting Secretary.

Fred Dennett,

Commissioner.

### DIGEST OF DECISIONS ON REPAYMENT.

"A desert entry of land embraced within a prior preemption filing is not an entry 'erroneously allowed' within the meaning of the repayment act, though an entry so made is subject to the subsequent assertion of the pre-emptor's right."

"The provisions of Section 2362, Revised Statutes, and of the Act of June 16th, 1880, with respect to repayment, contemplate relief only in cases where for some reason not within the entryman's control, title to the land cannot be passed by the Government." Citing J. N. Cauzell, 24 L. D., 575.

"Repayment should be allowed if 'from any cause' the entry was erroneously allowed and no fraud appears."

Instructions, 1 L. D., 526.

See also table Circulars, Instructions, and Regulations.

"In case of an entry that is 'erroneously allowed' for land not subject thereto, and canceled for that reason, repayment may be granted without inquiry as to the truth or falsity of the final proof."

W. E. McCord, 23 L. D., 137.

"An entry is not 'erroneously allowed' within contemplation of the repayment statute where the alleged defect is not of such a character as to necessarily defeat confirmation of the entry, and might have been cured by compliance with the requirements of the General Land Office."

Anthracite Mesa Coal Mining Company, 28 L. D., 551.

"The right to does not exist where the entry is properly allowed or proofs presented, but is subsequently canceled on the ascertainment it was procured on the false and misleading representations of the entryman."

Felix McGinn, 25 L. D., 29.

Crayton P. Bryant, 25 L. D., 30.

Edw. H. Sanford, 26 L. D., page 3.

W. H. Irvine, L. D., 422.

"If the land entered is not of the character contemplated by law under which the entry is made, but is expressly represented by the entryman to be of such character, and the lands of the entries procured by such representation, the entry in such cases is wrongfully procured and not 'erroneously allowed' within the meaning of the repayment law."

Geo. A. Stone, overruling the case of E. C. Mason, 22 L. D., 337; 25 L. D., 111.

"The right of repayment will be recognized in case of a desert land entry 'erroneously allowed' for land on both sides of a meandering stream, which was not the class which should have been meandered and which renders the tracts embraced within the entry uncontinuous, notwithstanding the entry was canceled for a different reason."

Abram Cole, 31 L. D., 311.

"The right to the repayment of the purchase money paid on desert land entry will be recognized where the entry as allowed is in form *prima facie* incompact, and it does not appear from the record that it was in as nearly compact form 'as its situation to the land and the situation of other lands will admit of' and was for reason erroneously allowed and could not have been confirmed."

Julia B. Keeler, 31 L. D., 354.

Section 2357, of the Revised Statutes, considered, right of repayment announced. Wm. W. Brandt, 31 L. D., 277.

A relinquishment filed with an application for repayment, in compliance with the terms of the repayment statute, should be treated as part of such application and accepted only in event of approval of the repayment claim. The Act of March 26th, 1908, does not repeal or modify existing laws covering repayments, nor does it authorize or contemplate opening of case under prior laws.

Peter A. Hausman, 37 L. D., 352.

"The term 'erroneously allowed' under the Act of June 16th, 1880, authorizes repayments in cases where entries have been erroneously allowed and cannot be confirmed, has reference solely to erroneous action on part of Government and furnishes no authority for repayment where by reason of mistake in description a timber and stone entry is made for land not intended to be entered.

Marie Steinberg, 37 L. D., 234.

Concerning subject of repayment consult the following cases:

Joseph Gibson, 37 L. D., 338.

James Febes, 37 L. D., 210.

Chas. C. Van Warmer, 37 L. D., 714.

35 L. D., 492.

David K. Emmons, 35 L. D., 599.

J. C. Murphy's Administrator et al., 35 L. D., 152.

Eugene Despin, 35 L. D., 580.

Wm. F. Brown, 35 L. D., 177.

36 L. D., 388.

Golden Empire Mining Co., 36 L. D., 561.



John W. Blee, 36 L. D., 265.  
 Harry M. Love, 36 L. D., 266.  
 John H. Wolff, 36 L. D., 428.  
 Monroe Morrow, 36 L. D., 155.  
 Union Pacific Railroad Co. et al., 38 L. D., 262.  
 D. B. Bowersox, 38 L. D., 213.  
 Walter Hollenstein, 38 L. D., 319.  
 Peter N. Hanson, 38 L. D., 169.  
 Chas. M. L. Daley, 39 L. D., 90.  
 Instructions, 39 L. D., 141.  
 Otto Westfal, 39 L. D., 752.  
 Frank G. Bell, 39 L. D., 191.  
 Calara F. Moran, 39 L. D., 434.  
 Hulda Rosling, 39 L. D., 477.  
 Mary Ward, 39 L. D., 495.  
 Instructions, timber and stone, 39 L. D., 573.

## RELINQUISHMENTS.

See Married Women page 266.

See Deserted Wife page 266.

Circular of January 25, 1904, p. 82, contains the following regulation concerning relinquishment.

The first section of the Act of May 14, 1880, provides:

(1) "That when a preemption, homestead, or timber culture claimant shall file a written relinquishment of his claim in the Land Office, the land covered by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office. \* \* \*

(2) "Relinquishments run to the United States alone, and no person obtains any right to the land by mere purchase of a relinquishment of filing or entry."

Entries and filings made for the purpose of holding the land for speculation and the sale of relinquishments are illegal and fraudulent, and every effort in the power of the Government will be exerted to prevent such frauds and to detect and punish the perpetrators."

(3) "Purchasers of relinquishment of fraudulent filings or entries should understand that they purchase at their own risk, so far as the United States is concerned, and must seek their own remedies under local laws against those who, by imposing such relinquishments upon them, have obtained their money without valuable consideration."

"The first section of the Act of May 14, 1880, provides that when a preemption, homestead or timber culture claimant shall file a written relinquishment of his claim in the Land Office, the land covered by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office.

The Register will note on each relinquishment, over his signature, the day and hour of its receipt, and will write the words 'cancelled by relinquishment' (giving date) opposite the record of the entry in the tract book, the register of entries, and the register of receipts, and will draw a line over the number of the entry on the township plat.

On Monday of each week the Register and Receiver are directed to transmit to this office all the relinquishments accepted by them

the preceding week, classifying the same in their letter of transmittal by class of entry so transmitted.

Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of filing or entry.

Entries and filings made for the purpose of holding the land for speculation and the sale of relinquishments are illegal and fraudulent, and every effort in the power of the Government will be exerted to prevent such frauds and to detect and punish the perpetrators.

Purchasers of relinquishments of fraudulent filings or entries should understand that they purchase at their own risk, so far as the United States is concerned, and must seek their own remedies under local law against those who, by imposing such relinquishments upon them, have obtained their money without valuable consideration."

### **RELINQUISHMENTS—CONTESTANT'S PREFERENCE— HOMESTEAD SETTLEMENTS.**

An Act for the relief of settlers on public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when a preemption, homestead, or timber culture claimant shall file a written relinquishment of his claim in the local land office, the land covered by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office.

Sec. 2. In all cases where any person has contested, paid the land office fees, and procured the cancellation of any preemption, homestead, or timber culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands: Provided, That said register shall be entitled to a fee of one dollar for the giving of such notice, to be paid by the contestant, and not to be reported.

Sec. 3. That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the preemption laws to put their claims on record, and his rights shall relate back to the date of settlement the same as if he settled under the preemption laws.

Approved, May 14, 1880 (21 Stat., 140).

(4) These relinquishments are of no force or effect until filed with the Land Office for the district in which the land is situated. When received at the Land Office the day and hour received will be noted over the signature of the officer receiving the same, and proper notations will be made upon the serial register, tract book and plats and other records. These papers are transmitted to the General Land Office with the register's return at the end of the month in which they are received. A schedule of such relinquishments is kept on file in the local land office. (See circular of June 10, 1908, L. D.)

(5) Relinquishments of entries can not defeat the preference right of contestants.

Contests are presumed to induce relinquishments. This presumption is always followed and the burden is on the applicant presenting the relinquishment of a contested entry to show that as a matter of fact the relinquishment was not induced by the contest. (See Circular, —, page —.)

(6) An entryman who relinquishes his entry exhausts his right to make another unless he can bring himself within the provisions of the law allowing second homestead entries, or presents such state of facts as will justify the exercise of the equitable powers of the Department in allowing second notice.

For information on this subject consult Title "Second Homestead Entries."



A relinquishment of a non-contested entry presented with new application gives the applicant the first right to file on the land.

(7) A relinquishment of a non-contested entry of land in the possession of another at the time of filing of relinquishment can not defeat the right of the party in possession.

(8) "The right of a settler who is residing upon land covered by the entry of another attaches eo instanti on the relinquishment and cancellation of such entry, and is superior to that of a homesteader who makes entry of the land immediately after its relinquishment." (Stone v. Cowles, 13 L. D., 192.)

(9) A timber culture entryman who files a relinquishment and thereupon applies to another the land under the homestead law, can not thereby defeat the right of a settler who is residing upon said land at the date of the relinquishment. (13 L. D., 148.)

(10) "Takes effect immediately on filing notwithstanding a pending contest and opens the land to the entry of the first legal applicant, which is subject, however, to the preferred right of the contestant." (11 L. D., 266, 283, 313-619.)

(11) "The right of a settler who is on land embraced within the entry of another attaches at once on the relinquishment of said entry, and defeats an application to another filed by a third party immediately after said relinquishment."

Neil v. Southard, 16 L. D., 386; Zaspell v. Nolan, 13 L. D., 148; Fosgate v. Bell, 14 L. D., 439; McGowan v. McCann, 15 L. D., 542.

"A settler on land covered by the entry of another acquires a legal status, as against the Government the instant such entry is relinquished, and the right thus acquired is not defeated by the entry of a third party immediately following said relinquishment." (McCann, 15 L. D., 542.)

(12) "A settler on land covered by the entry of another acquires a legal status, as against the Government the instant such entry is relinquished, and the right thus acquired is not defeated by the entry of a third party immediately following said relinquishment." (McCann, 15 L. D., 542.)

(13) Under the above rulings a person in possession of land at the time of the relinquishment has the right of entry on the ground of prior possession, and his remedy is by contest on that ground, or by applying for an order directing the entryman to show cause why his entry should not be canceled, on the ground that the applicant is a prior settler.

On February 13, 1912, Commissioner of the General Land Office issued Circular No. 81, covering additional relinquishments:

#### (a) Conditional Relinquishments.

\* \* \* By direction of the Secretary of the Interior, you are advised that the practice now prevailing in some local offices of allowing the filing of a conditional relinquishment of an entry or claim subject to the allowance of an accompanying application for the land involved, must be discontinued.

Accordingly you are advised of such practice that hereafter (except as noted below) the filing of a relinquishment of an entry or claim will be treated as absolute, and cancellation thereof at once noted of record, and the tract embraced therein will be subject to disposition under existing laws. The only exceptions to this rule are relinquishments of approved rights of way, conditioned upon the approval of a subsequent application, filed as an amendment to the approved right of way, or as an independent application, but ..... in whole or in part with the approved right of way. Such relinquishments should not be noted until you are advised of their acceptance by this office. Many applications for improvements of entries are accompanied by relinquishments of the tracts sought to be excluded. This is not necessary, and you should advise such applicants that if the relinquishment is filed it is your duty to at once make the same of record."

(14) An entryman may relinquish at pleasure any legal subdivision of his entry, if no transfer thereof has been made, and such relinquishment will take effect immediately upon its filing." (Strader v. Goodhue, 31 L. D., 137.)

(15) If an entry is relinquished pending attack by several parties alleging priority of settlement, the question of priority shall be determined before allowing either of the parties contestant to make entry of the land involved." (Cagle v. Mendenhall, 26 L. D., 177.)

(16) "A contract to sell the relinquishment of a homestead entry is not in violation of the oath required of the homestead applicant by Section 2290 of the

Revised Statutes as amended by the Act of March 3, 1891, and is no ground for cancellation of the entry if good faith on the part of the entryman at the time of making his entry is apparent." (*Stubendordt v. Carpenter*, 32 L. D., 139.)

(17) Relinquishment of entries run only to the United States, and when filed for any purpose operate to clear the record of the entries to which they relate and should generally be treated as a part of the records of the Land Department." (*Judson Reno*, 35 L. D., 254.)

(18) "No such rights are required by an application to intervention in proceedings instituted by the Government against a final entry as will prevent the acceptance of a relinquishment of the entry and the allowance of another application for the same land." (36 L. D., 440.)

(19) "A relinquishment of an entry procured through misrepresentation is invalid." (*Kunz v. Joehim*, 37 L. D., 169.)

(20) "The filing of an unconditional relinquishment operates eo instanti to terminate the entry, which is thereafter no obstacle to the making of a second entry by the entryman notwithstanding it may remain uncanceled of record." (37 L. D., 282.)

(21) "A relinquishment of a part of a homestead entry, which would render the remaining tracts noncontiguous, should not be accepted.

Where, however, such a relinquishment was accepted, and the entryman upon the faith of such action complies with the law and submits proof with respect to the remaining noncontiguous tracts, the entry may be submitted to the board of equitable adjudication with a view to confirmation." (*Geo. H. Plowman*, 38 L. D., 412.)

(22) "A homestead entry by one who purchased the improvements and relinquishment of a prior entryman will not be canceled to reinstate the former entry in the absence of fraud or bad faith merely because the relinquishment of the former entry was filed after the entryman's death.

As between the parties a sale of improvements and relinquishment of an entry is a valid contract and though it conveys no right as against the United States, it is obligatory on the entryman and his heirs, and the equity of the purchase to make entry may properly be recognized if exercised promptly and prior to the intervention of any adverse right."

(*Wilson v. Holmes et al.*, 38 L. D., 475.)

(23) Entry not to be canceled until rights of mortgagee have been determined. (*Henry Gimble et al.*, 38 L. D., 198.)

(24) The relinquishment of homestead entry in good faith to avoid controversy with an adverse claim believed, or reasonably apprehended to be superior, would not defeat the right of the party to make a second entry under the Act of February 3, 1911. (*Patry v. Rowe*, 39 L. D., 219.)

(For further information on this subject see Title Re-payment Mortgage, Possession of Lands.)

[In reply please refer to Circular No. 141.]

## INSTRUCTIONS AS TO RELINQUISHMENTS BY INDIANS.

Department of the Interior,  
General Land Office,  
Washington, July 15, 1912.

Registers and Receivers,  
United States Land Offices.

Sirs: The Commissioner of Indian Affairs in his letter of July 1, 1912, requests that the local officers be instructed to require Indians, in the execution of relinquishments, of allotment applications, or homestead entries under the Act of July 4, 1884, to make a statement on the back of the relinquishments submitted of the reasons governing them in making such relinquishments.

The Commissioner of Indian Affairs states that this would, in many cases, eliminate the necessity of obtaining from the officials in the field a special report as to the propriety of accepting the relinquishment.

You will, therefore, in case of a relinquishment, filed by an Indian, of an allotment application, or of a homestead entry, under the Act of July 4, 1884, require the party to write at the foot of the regular form provided for relinquishments, or upon the back thereof, a clear statement of his reasons for desiring to make such relinquishment.

Very respectfully,

S. V. Proudfit,  
Assistant Commissioner.



## SALE AND DISPOSAL OF THE PUBLIC LANDS.

- Sec. 2353. Public sale of lands in half quarter-sections.
- Sec. 2354. Private sales, in what bodies.
- Sec. 2355. Private sales, proceedings in.
- Sec. 2356. No credit on sales of public lands.
- Sec. 2357. Price of lands \$1.25 per acre.
- Sec. 2358. Public lands may be offered for sale in such proportions as the President chooses.
- Sec. 2359. Advertisement of sales.
- Sec. 2360. Duration of sales.
- Sec. 2361. Several certificates issued to two or more purchasers of same section.
- Sec. 2362. Purchase-money refunded where sale cannot be confirmed.
- Sec. 2363. Refunding in certain cases, how done.
- Sec. 2364. Minimum price, how fixed when reservations sold.
- Sec. 2365. Highest bidder when preferred in private sales.
- Sec. 2366. What coins receivable in payment for public lands.
- Sec. 2367. Lands in California subject to private entry and withdrawn, how to be opened to entry.
- Sec. 2368. Certain lands located in good faith, by claims arising under treaty of September 30, 1854, may be purchased, etc.
- Sec. 2369. Mistakes in entry of land, provisions for.
- Sec. 2370. Mistakes in patent lands.
- Sec. 2371. Mistakes in location of warrants.
- Sec. 2372. Error in entry by mistake of numbers, proceedings upon.
- Sec. 2373. Agreement and acts intended to prevent bids, penalty.
- Sec. 2374. Agreements to pay premium to purchasers at public sales.
- Sec. 2375. Recovery of premiums paid to purchasers at public sales.
- Sec. 2376. Discovery of agreements to pay premiums by bill in equity.
- Sec. 2377. Limitation of entries by agricultural-college scrip.
- Sec. 2378. Grant to new States.
- Sec. 2379. Selections and locations of lands granted in last section.

Sec. 2353. All the public lands, the sale of which is authorized by law, shall, when offered at public sale to the highest bidder, be offered in half quarter-sections.

24 April, 1820, c. 51, s. 1. v. 3, p. 566; U. S. v. Gratiot, 14 Pet., 526; Oliver v. Piatt, 3 How., 333; Brown's Lessee v. Clements, 3 How., 650; Gazzam v. Phillips, 20 How., 372; Eldred v. Septon, 19 Wall., 189.

Sec. 2354. All the public lands, when offered at private sale, may be purchased, at the option of the purchaser, in entire sections, half-sections, quarter-sections, half quarter-sections, or quarter quarter-sections.

Sec. 2355. Every person making application at any of the land offices of the United States for the purchase at private sale of a tract of land shall produce to the register a memorandum in writing, describing the tract, which he shall enter by the proper number of the section, half-section, quarter-section, half quarter-section, or quarter quarter-section, as the case may be, and of the township and range, subscribing his name thereto, which memorandum the register shall file and preserve in his office.

Sec. 2356. Credit shall not be allowed for the purchase-money on the sale of any of the public lands, but every purchaser of lands sold at public sale shall, on the day of purchase, make complete payment therefor; and the purchaser at private sale shall produce to the register of the land office a receipt from the Treasurer of the United States, or from the receiver of public moneys of the district, for the amount of the purchase-money on any tract, before he enters the same at the land office; and if any person, being the highest bidder at public sale for a tract of land, fails to make payment therefor on the day on which the same was purchased, the tract shall be again offered at public sale on the next day of sale, and such person shall not be capable of becoming the purchaser of that or any other tract offered at such public sales.

Sec. 2357. The price at which the public lands are offered for sale shall be one dollar and twenty-five cents an acre; and at every public sale, the highest bidder, who makes payment as provided in the preceding section, shall be the purchaser; but no land shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents an acre; and all the public lands which are hereafter offered at public sale, according to law, and remain unsold at the close of such public sales, shall be subject to be sold at private sale,

by entry at the land office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry: Provided, That the price to be paid for alternate reserved lands, along the line of railroads within the limit granted by any Act of Congress, shall be two dollars and fifty cents per acre.

Sec. 2358. Whenever the President is authorized to cause the public lands, in any land-district, to be offered for sale, he may offer for sale, at first, only a part of the lands contained in such district, and at any subsequent time or times, he may offer for sale in the same manner any other part, or the remainder of the lands contained in the same.

Sec. 2359. The public lands which are exposed to public sale by order of the President shall be advertised for a period of not less than three nor more than six months prior to the day of sale, unless otherwise specially provided.

Sec. 2360. The public sales of lands shall, respectively, be kept open for two weeks, and no longer, unless otherwise specially provided by law.

Sec. 2361. Where two or more persons have become purchasers of a section or fractional section, the Register of the land office of the district in which the lands lie shall, on application of the parties, and a surrender of the original certificate, issue separate certificates, of the same date with the original, to each of the purchasers, or their assignees, in conformity with the division agreed on by them; but in no case shall the fractions so purchased be divided by other than north and south, or east and west, lines; nor shall any certificate issue for less than eighty acres.

Sec. 2362. The Secretary of the Interior is authorized, upon proof being made, to his satisfaction, that any tract of land has been erroneously sold by the United States, so that from any cause the sale cannot be confirmed, to repay to the purchaser, or to his legal representatives or assignees, the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated.

Sec. 2363. Where any tract of land has been erroneously sold, as described in the preceding section, and the money which was paid for the same has been invested in any stocks held in trust, or has been paid into the Treasury to the credit of any trust-fund, it is lawful, by the sale of such portion of the stocks as may be necessary for the purpose, or out of such trust-fund, to repay the purchase money to the parties entitled thereto.

Sec. 2364. Whenever any reservation of public lands is brought into market, the Commissioner of the General Land Office shall fix a minimum price, not less than one dollar and twenty-five cents per acre, below which such lands shall not be disposed of.

Sec. 2365. Where two or more persons apply for the purchase, at private sale, of the same tract, at the same time, the Register shall determine the preference, by forthwith offering the tract to the highest bidder.

Sec. 2366. The gold coins of Great Britain and other foreign coins shall be received in all payments on account of public lands, at the value estimated annually by the Director of the Mint, and proclaimed by the Secretary of the Treasury, in accordance with the provisions of section thirty-five hundred and sixty-four, title, "The Coinage."

Sec. 2367. Wherever lands in California subject to private entry have been or are hereafter withdrawn from market for any cause, such lands shall not thereafter be held subject to private entry until they have first been open for at least ninety days to homestead and pre-emption settlers, and again offered at public sale.

Sec. 2368. The Secretary of the Interior is authorized to permit the purchase, with cash or military bounty-land warrants, of such lands as may have been located with claims arising under the seventh clause of the second article of the treaty of September thirty, eighteen hundred and fifty-four, at such price as he deems equitable and proper, but not at a less price than one dollar and twenty-five cents per acre, and the owners and holders of such claims in good faith are also permitted to complete their entries, and to perfect their titles under such claims upon compliance with the terms above mentioned; but it must be shown to the satisfaction of the Secretary of the Interior that such claims are held by innocent parties in good faith, and that the locations made under such claims have been made in good faith and by innocent holders of the same.

Sec. 2369. In every case of a purchaser of public lands, at private sale, having entered at the land office, a tract different from that he intended to purchase, and being desirous of having the error in his entry corrected, he



shall make his application for that purpose to the Register of the land office; and if it appears from testimony satisfactory to the Register and Receiver, that an error in the entry has been made, and that the same was occasioned by original incorrect marks made by the surveyor, or by the obliteration or change of the original marks and numbers at corners of the tract of land; or that it has in any otherwise arisen from mistake or error of the surveyor, or officers of the land office, the Register and Receiver shall report the case, with the testimony and their opinion thereon, to the Secretary of the Interior, who is authorized to direct that the purchaser is at liberty to withdraw the entry so erroneously made, and that the moneys which have been paid shall be applied in the purchase of other lands in the same district, or credited in the payment of other lands which have been purchased at the same office.

Sec. 2370. The provisions of the preceding section are declared to extend to all cases where patents have issued or may hereafter issue; upon condition, however, that the party concerned surrenders his patent to the Commissioner of the General Land Office, with a relinquishment of title thereon, executed in a form to be prescribed by the Secretary of the Interior.

Sec. 2371. The provisions of the two preceding sections are made applicable in all respects to errors in the location of land warrants.

Sec. 2372. In all cases of an entry hereafter made, of a tract of land not intended to be entered, by a mistake of the true numbers of the tract intended to be entered, where the tract, thus erroneously entered, does not in quantity exceed one-half section, and where the certificate of the original purchaser has not been assigned, or his right in any way transferred, the purchaser, or, in case of his death, the legal representatives, not being assignees or transferees, may, in any case coming within the provisions of this section, file his own affidavit, with such additional evidence as can be procured, showing the mistake of the numbers of the tract intended to be entered, and that every reasonable precaution and exertion had been used to avoid the error, with the Register and Receiver of the land district within which such tract of land is situated, who shall transmit the evidence submitted to them in each case, together with their written opinion, both as to the existence of the mistake and the credibility of each person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made, and that every reasonable precaution and exertion had been made to avoid it, is authorized to change the entry, and transfer the payment from the tract erroneously entered, to that intended to be entered, if unsold; but if sold, to any other tract liable to entry; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize any such change of entry; nor shall anything herein contained affect the right of third persons.

Sec. 2373. Every person, who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree, with any other person, that the last named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who, by intimidation, combination, or unfair management, hinders, or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

Sec. 2374. If any person before, or at the time of the public sale of any of the lands of the United States, enters into any contract, bargain, agreement, or secret understanding with any other person, proposing to purchase such land, to pay or to give to such purchasers for such land a sum of money or other article of property, over and above the price at which the land is bid off by such purchasers, every such contract, bargain, agreement, or secret understanding, and every bond, obligation, or writing of any kind whatsoever, founded upon or growing out of the same, shall be utterly null and void.

Sec. 2375. Every person being a party to such contract, bargain, agreement, or secret understanding, who pays to such purchaser any sum of money or any other article of value, over and above the purchase money of such land, may sue for and recover such excess from such purchaser in any court having jurisdiction of the same.

Sec. 2376. If the party aggrieved have no legal evidence of such contract, bargain, agreement, or secret understanding, or of the payment of the excess, he may, by bill in equity, compel such purchaser to make discovery thereof; and if in such case the complainant shall ask for relief, the court in which

the bill is pending may proceed to final decree between the parties to the same; but every such suit either in law or equity shall be commenced within six years next after the sale of such land by the United States.

Sec. 2377. In no case shall more than three sections of public lands be entered at private entry in any one township by scrip issued to any State under the Act approved July two, eighteen hundred and sixty-two, for the establishment of an agricultural college therein.

Sec. 2378. There is granted, for purposes of internal improvement, to each new State, hereafter admitted into the Union, upon such admission, so much public land as, including the quantity that was granted to such State before its admission and while under a territorial government, will make five hundred thousand acres.

Sec. 2379. The selections of lands, granted in the preceding section, shall be made within the limits of each State so admitted into the Union, in such manner as the legislatures thereof, respectively, may direct; and such lands shall be located in parcels conformably to sectional divisions and subdivisions of not less than three hundred and twenty acres in any one location, on any public land not reserved from sale by law of Congress or by proclamation of the President. The locations may be made at any time after the public lands in any such new State have been surveyed according to law.

### SUPERVISORY CONTROL.

Authority of Secretary.—The Secretary is bound to exercise "that just supervision which the law vests in him over all proceedings instituted to acquire portions of the public lands": *Lee v. Johnson*, 116 U. S. 48; this supervisory power may be exercised of his own motion and in the absence of appeal; *Knight v. Land Assn.*, 142 U. S. 178; *Pueblo of San Francisco*, 5 L. D. 483; it is ordinarily to be exercised according to certain fixed rules; *Asher v. Holmes*, 8 L. D. 396; and is properly involved by application for certiorari; *H. C. Putnam*, 5 L. D. 22; it is properly exercised to prevent substantial injustice; *Dickson v. Schlater*, 2 L. D. 597; *Oscar T. Roberts*, 8 L. D. 423; as in case of relinquishment by an entryman to defraud his transferee; *William v. U. S.*, 138 U. S. 514; it extends to a waiver of all irregularities in the proceedings and consideration of the case on its merits; *C. W. Filkins*, 5 L. D. 49, to order a hearing out of time; *Alice Placer*, 4 L. D. 314; *Sweeney v. Wilson*, 10 L. D. 157; *Devereux v. Hunter*, 11 L. D. 214; *Tam v. Story*, 16 L. D. 282; to overlook delay or irregularity in filing a motion for review; *R. R. v. Bass*, 14 L. D. 443; to reopen a case that has been closed by failure to appear; *Pikes Peak Lode*, 14 L. D. 47; *Purcell v. R. R.*, 14 L. D. 574; and to dispense with the requirements of the rules of practice; see *Power to Waive Rules*. See case, *Cogle v.*, 26 L. D. 177.

Authority of Commissioner.—"The Commissioner of the General Land Office exercise a general superintendence over the subordinate officers of his department, and is clothed with liberal powers of control, to be exercised for the purpose of justice and to prevent the consequences of inadvertence, irregularity, mistake and fraud in the important and extensive operations of that officer;" so he may accept surrender of a patent and issue a new one to correct an error: *Bell v. Hearne*, 19 How. 252; the Commissioner's power and duty of supervision are emphasized in *Barnard v. Ashley*, 18 How. 43; *Stephen Sweayze*, 5 L. D. 570; *Dippert v. Berger*, 13 L. D. 496; *Cogle v. Mendenhall*, 26 L. D. 177.

An inherent supervisory power, independent of the Rules of Practice, is claimed by the Commissioner (*McFarland* in *Willardson v. Dusterberg*, 1 L. D. 455); and the Commissioner has power to waive the requirements of any of the Rules of Practice. (See *Waiver by Commissioner*.)

Force of Departmental Regulations.—All officers administering the public lands are bound by the regulations of the Department; *Harkness v. Underhill*, 1 Black 325; the Rules of Practice have the force of a statute; *Parker v. Castle*, 4 L. D. 84; *Stevens v. Robinson*, 5 L. D. 111; *Farrier v. Falk*, 13 L. D. 546; *Witt v. Henley*, 12 L. D. 198; so of Circulars; *Hyde v. Warren*, 14 L. D. 575; a Departmental regulation not contrary to law has the force of law and will justify cancellation of entries made or prosecuted in violation of it; *Rogers v. Lukens*, 6 L. D. 111; *Hessong v. Burgan*, 9 L. D. 353; and a decision construing a rule has the effect of law; *Waterhouse v. Scott*, 13 L. D. 718; and all persons are bound to take notice of Departmental rulings; *Hoover v. Lawton*, 13 L. D. 635.

A Department regulation requiring a record to be kept makes such record



evidence of its contents; as a record of registered letters; *Gurney v. Howe*, 9 Gray 404; and the records of the Signal Service; *De Armond v. Neasmith*, 32 Mich. 231; *Evanston v. Gunn*, 99 U. S. 660.

But a Departmental regulation may be void, though not contrary to any express provision of law; *Quinn v. Chapman*, 111 U. S. 445.

Force of Departmental Usage.—In addition to formal regulations and decisions, "usages have been established in every department of the Government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits": *U. S. v. McDaniel*, 7 Peters 1; *Instructions*, 13 L. D. 9.

Effect of Local Law.—The provisions of local statutory law cannot vary the practice in the land office; *Dewey v. Christie*, 4 L. D. 346, but may regulate matters not provided for by Departmental Rules; *Hagan v. Gulbranson*, 10 L. D. 238, and cases cited.

Power to Waive the Rules.—Every court has inherent power to suspend its rules to prevent injustice; *Yturvide v. U. S.*, 22 How. 290; *Poultney v. LaFayette*, 12 Peters 472; and the Rules of Practice will not be allowed to hinder the just disposal of the public land; *Ayers v. Buell*, 2 L. D. 257; and will be waived in the interest of substantial justice; *Pierce v. McDougal*, 11 L. D. 183, and cases cited.

But the rules are waived only where good reason is shown therefor; *Vesuvius Lode*, 11 L. D. 101; to prevent grievous wrong or to correct palpable mistakes; *Oregon*, 9 L. D. 360; and not unless the necessity is urgent and no other rights are to be prejudiced; *Wm. E. Dargie*, 13 L. D. 227; *Stevens v. Robinson*, 5 L. D. 111; an application for relaxation of the rules should be full and definite and supported by affidavit; *Witt v. Henley*, 12 L. D. 198.

While the Department may overlook violations of its own regulations, it cannot dispense with laws; *Doten v. Derevan*, 3 L. D. 254.

Waiver by Commissioner.—The Commissioner has power to dispense with any regulation established by himself: *Lytle v. Arkansas*, 9 How. 314; he may also waive any of the Rules of Practice; *Jolly Cobbler Lode*, 3 L. D. 321; and his discretion will not be overruled unless prejudice appears; *Bennett v. Cravens*, 12 L. D. 647; he is particularly authorized to grant extension of time for filing appeals and motions for review; *Ojo del Espiritu Santo*, 3 L. D. 59; *Haffey v. States*, 14 L. D. 423; *Wagon Rd. Co. v. Hart*, 17 L. D. 480; *Holloway v. Lewis*, 13 L. D. 265, and cases cited.

### **SALINE LANDS RESERVED AND SOLD UNDER GENERAL LAWS.**

The circular of the General Land Office of January 25, 1904, contained the following regulations and instructions:

"Congress passed an Act January 12, 1877 (19 Stat., 221), for the sale of saline or salt-spring lands in certain States. This Act has exclusive reference to that class of lands which at an early period were segregated from the public lands on account of salt springs and reserved from disposal under general laws, and which, therefore, to use the language of the statute, were 'incapable of being purchased under any of the laws of the United States relative to the public domain.' (See decision of the Supreme Court of the United States in the case of *Morton v. Nebraska*, 21 Wallace, 660.) These lands never were subject to the operation of the homestead and preemption laws, nor of any other law for the disposal of the public lands, except the Act of January 12, 1877, above referred to. That Act provides for the disposal of such lands in a certain contingent at private sale, and, being special in character and of particular application, is not repealed or modified by the general provisions of the Act of March 2, 1889, 'to withdraw certain public lands from private entry' (25 Stat. L., 854, 32; second paragraph circular of March 8, 1889, 8 L. D., 314)."

#### **Determination of the Character of the Lands.**

Should prima facie evidence that certain tracts are saline in character be filed with the Register and Receiver of the proper land district, they will designate a time for a hearing at their office and give notice to all parties in interest, in order that they may have ample opportunity to be present with their witnesses. Such witnesses will be examined in regard to the saline character of the given tracts and whether the same are claimed by any person; if so, the names of the claimants and the extent of their improvements must be shown.

\* The witnesses should be thoroughly examined as to the true character of the land in other respects—its agricultural capacities; what kind of crops, if any, have been raised thereon or can be raised from land of such character; whether it contains any valuable deposit of mineral of any kind or of coal. In short, the testimony should be as complete as possible, and in addition to the points indicated above everything of importance bearing upon the character of the land should be elicited at the hearing.

The testimony taken at the hearing will be transmitted to the General Land Office by the Register and Receiver, with their opinion thereon. When the case comes before the General Land Office such a decision will be rendered in regard to the character of the land as the facts may warrant.

Should the tracts be adjudged saline lands, the Register and Receiver will be instructed to offer the same for sale, after public notice, at the local land office of the district in which the same shall be situated, and to sell said tract or tracts to the highest bidder for cash at a price not less than \$1.25 per acre.

In case said lands should not be sold when so offered, they will be subject to private sale for cash at a price not less than \$1.25 per acre, in the same manner as other public lands are sold at private sale.

Should the tract in question be adjudged agricultural or mineral, it will be subject to disposal as such.

The provisions of this Act do not apply to any lands within the Territories, nor to any within the States of Mississippi, Louisiana, Florida, California, or Nevada, none of which has had a grant of salines by Act of Congress; nor do they apply to the States of Idaho, North Dakota, South Dakota, Montana, Washington, or Wyoming, none of which has had an express grant of saline lands, although each has had a grant declared to be in lieu of saline and other special grants.

Attention is called to the Act of January 31, 1901 (31 Stat. L., 745), which reads as follows:

That all unoccupied public lands of the United States containing salt springs or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer mining claims: Provided, That such persons shall not locate or enter more than one claim hereunder.

Since the date of said Act, persons making applications to enter or locate public lands under the homestead or other laws providing for the disposal of lands not mineral in character in States and Territories excluded by statute from the operation of the general mining laws are required to furnish an affidavit (Form 4-062a) showing that the land applied for contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor. (See circular of November 14, 1901; 31 L. D., 131.)

The regular non-mineral affidavit (Form 4-062) has been modified to cover the provisions of the Act above referred to, for use in those States where a non-mineral affidavit is required.

For information relative to the location of this class of lands under the laws relating to placer mining, see circular of instructions under the mining laws.

### **An Act Providing for the Sale of Saline Lands.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever it shall be made appear to the Register and Receiver of any land office of the United States that any lands within their district are saline in character, it shall be the duty of said Register and said Receiver, under the regulation of the General Land Office, to take testimony in reference to such lands to ascertain their true character, and to report the same to the General Land Office; and if, upon such testimony, the Commissioner of the General Land Office shall find that such lands are saline and incapable of being purchased under any of the laws of the United States relative to the public domain, then, and in such case, such lands shall be offered for sale by public auction at the local land office of the district in which the same shall be situated, under such regulations as shall be prescribed by the Commissioner of the General Land Office, and sold to the highest bidder for cash at a price not less than one dollar and twenty-five cents per acre; and in case said lands fail to sell when so offered, then the same shall be subject to private sale at such land office, for cash, at a price not less than one dollar and twenty-five cents per acre, in the same manner as other lands of the United States are sold: Provided, That the



foregoing enactments shall not apply to any State or Territory which has not had a grant of salines by Act of Congress, nor to any State which may have had such a grant, until either the grant has been fully satisfied, or the right of selection thereunder has expired by efflux of time. But nothing in this Act shall authorize the sale or conveyance of any title other than such as the United States has, and the patents issued shall be in the form of a release and quitclaim of all title of the United States in such lands.

Sec. 2. That all executive proclamations relating to the sales of public lands shall be published in only one newspaper, the same to be situated, and to be designated by the Secretary of the Interior. Approved, January 12, 1877. (19 Stat., 221.)"

### Digest of Decisions on Subject of Saline Lands.

"Until the passage of the Act of January 31, 1901, the policy of the Government was to reserve saline lands from disposal under any of the public land lands, whether relating to the deposition of agricultural lands or relating to the location or purchase of mineral lands, excepting as provided by the Act of January 12, 1877." (Territory of New Mexico, 21 L. D., 389.)

(For grant made by section 1 of the Act of June 21, 1908, to Territory of New Mexico, and character of lands passing thereunder, see case Territory of New Mexico, 31 L. D., 389.)

"The grant to the Territory of New Mexico, for the benefit of its University, by section 3 of the Act of June 21, 1898, of 'All Saline Lands in said Territory,' includes only such lands as contain common salt (sodium chloride) in its various forms of existence or deposit, and in commercially valuable quantities." (Territory of New Mexico, 35 L. D., p. 1.)

### Salt Springs.

It is only with respect to the actual production of salt by the usual process that saline springs and deposits may be regarded as within the purview of the mining laws, and the installation upon a mining claim containing saline springs or bathhouses and appurtenances for the use of the water for bathing purposes, nor in no respect could future improvements beyond those utilized, can be regarded in any respect as mining improvements.

35 L. D., 426.

(See citations of decisions under section of Revised Statutes and Acts of Congress cited and construed.)

### SCRIP LOCATIONS.

1. Character of scrip.
2. Soldiers' additional homestead rights.
3. Form of assignment.
4. Circular relating to location, etc.
5. Regulations concerning location on unsurveyed land.
6. Private land indemnity scrip.
7. Bounty land warrants, etc.

See Soldiers' and Sailors' Homestead Rights.

1. There are a great many kinds of scrip, among which may be mentioned soldiers' and sailors' additional rights, forest reserve and Santa Fe, Washburn, Ewing, Alabama, Florida, Louisiana, Missouri, Sioux half breed, Valentine, Girard, Northern Pacific and others, not to mention land warrants. Space forbids extended presentation of the law and regulations concerning all of these scrips.

"It was formerly the practice, on proof of military service and original entry under section 2306, Revised Statutes, to issue a certificate in the name of the soldier-entryman, showing his additional right and its area, but the practice was discontinued by circular of February 13, 1883 (1 L. D., 654), and it is held that there is no statutory authority for the same and that the soldier may obtain the right for himself or sell it to another without certification (23 L. D., 152)."

By the Act of March 3, 1893 (27 Stat. L., 593), provision is made that where soldiers' additional homestead entries have been made or initiated upon a certificate of the Commissioner of the General Land Office of the right to make such entry, and the certificate of right is found to be erroneous or invalid for any cause, the party in interest thereunder on making proof of

his purchase, may, if there is no adverse claimant, perfect his title by payment of the Government price for the land, but no person may acquire more than 160 acres through the location of any such certificate.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

“That section one of an Act entitled ‘An Act to repeal timber-culture laws, and for other purposes,’ approved March third, eighteen hundred and ninety-one, be, and hereby is, amended by adding the following words to the fourth provision thereof: \* \* \* And provided further, That where soldiers’ additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate.”

\* \* \* \* \*

Approved March 3, 1893 (27 Stat., 593).

“By the Act of August 18, 1894 (28 Stat. L., 397), all certificates regularly issued are declared to be valid, notwithstanding any attempted sale or transfer, and holders thereof desiring to exercise a right of entry in their own names must file such certificates in the General Land Office, together with satisfactory proof of ownership and of bona fide purchase for value. If, upon examination, the proof so filed is satisfactory, an additional certificate will be attached to the original authorizing the location thereof, or entry of land therewith, in the name of the assignee or his assigns. (Circular of October 16, 1894; 19 L. D., 302.)”

An Act making appropriation for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

\* \* \* \* \*

“That all soldiers’ additional homestead certificates heretofore issued under the rules and regulations of the General Land Office under section twenty-three hundred and six of the Revised Statutes, or in pursuance of the decisions or instructions of the Secretary of the Interior, of date March tenth, eighteen hundred and seventy-seven, or any subsequent decisions or instructions of the Secretary of the Interior or the Commissioner of the General Land Office, shall be, and are hereby, declared to be valid, notwithstanding any attempted sale or transfer thereof; and where such certificates have been or may hereafter be sold or transferred, such sale or transfer shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value; and all entries heretofore or hereafter made with such certificates by such purchasers shall be approved, and patent shall issue in the name of the assignees.”

\* \* \* \* \*

Approved August 18, 1894 (28 Stat., 397).

“To prevent confusion and provide a uniform rule for the transfer and assignment of soldiers’ additional rights, recertified to owners and bona fide purchasers under said Act of Congress of August 18, 1894, and official circular of October 16, 1894 (*supra*), the following mode of procedure should be observed:

1. The assignment may be written or printed upon a separate sheet or sheets of paper to be securely attached to the certificate.

2. Each assignment must be attested by two witnesses and duly acknowledged before some officer authorized to take acknowledgements of deeds in the county or district wherein the assignment is made, who shall certify that the assignor is well known to such officer, that he is the identical person to whom the soldier’s additional right was recertified, and who executes the assignment thereof.”

(See former page.)

This law does not prohibit the location of said certificates by the holders as heretofore, either by the soldiers in person or by others acting as attorneys for the soldiers and in the names of the soldiers. Therefore, when application is made to locate such a certificate by the holder in the name of the soldier



the entry of land under said certificate will be allowed if the application papers are regular in all other respects.

The instructions above given relative to certificates of right recertified under Act of August 18, 1894 (28 Stat. L., 397), apply with equal force as to the requisites of assignments of uncertified additional homestead rights, and the forms of assignment prescribed therein may be modified so that the same shall contain the substantial matter thereof.

All applications to locate certificates of additional homestead rights must describe a particular tract and be presented at the local land office having jurisdiction over the land desired to be entered, and must be accompanied by the usual nonmineral and nonsaline affidavits.

An assignee of an uncertified right desiring to make an additional entry under this section must present his application as the assignee of the soldier for a specific tract of land to the Register and Receiver of the local office in whose jurisdiction the land lies, accompanying the same by a complete assignment duly executed, attested, and acknowledged as prescribed respecting the assignment of bounty land warrants. The identity of the original assignor with the soldier and original entryman must be established by the affidavits of two witnesses, preferably by such as have personal knowledge of the facts, or, if such witnesses can not be procured, a satisfactory reason must be given, and other facts presented tending to establish such identity.

The applicant must furnish his affidavit of bona fide ownership at the date of the application, evidence of his citizenship, the usual nonsaline and non-mineral affidavits, and the affidavit of the soldier showing that he has in no other manner exercised his homestead right than by making the original entry, either by making an additional entry under said section or under any other Act.

Affidavits to establish the material facts necessary to the proof of the existence of the right in the applicant and the character of the lands sought to be entered may be executed before any officer authorized to administer oaths, and is not confined to the land district in which the land sought to be entered is situate, and the affidavit as to the character of the land sought to be entered may be made by any credible person having the requisite knowledge of the premises. (31 L. D., 320.)

A soldier desiring to make the additional entry in person must accompany his application with the evidence of his identity and of his unimpaired ownership.

An application to make an additional entry, not accompanied by a certificate of right from this office, must be forwarded by the local land office to this office for consideration and for instructions relative to allowing the entry. Proper notation should be made by the local officers on their records, showing the pendency of such application and the consequent segregation of the land. (See Appendix, circular letters of February 18, 1890, and December 4, 1890, pp. 238-239.)

The Register and Receiver will, after entry is authorized, require the party to pay the same fee and commissions as in cases of original entry; the Receiver will issue his receipt for the money paid, and these papers will receive the current date and the proper numbers in their homestead series. Then, to complete the transaction—it being an object, for the convenience of business, that the additional entry papers and the final papers therefor in such cases shall be kept separate and distinct—the party will make payment of the usual final commissions on the entered tract, for which the Receiver will issue his receipt; the Register will thereupon issue his final certificate for the additional tract (Form 4-197, p. 287), the receipt and certificate to bear their proper numbers in the final homestead series, likewise a reference to the original entry and to the final certificate thereon by their numbers, and also by their district, where the party's first entry shall have been made in a different district.

Note.—The foregoing is taken from circular of January 25, 1904.

**Forms for Assignment of Soldier's Certificates Recertified to Owners and Purchasers Under Act of August 18, 1894.**

#### ASSIGNMENT BY FIRST OWNER UNDER RECERTIFICATION.

For Value Received, I, ..... of .....  
in the ....., and ....., assignee of the original  
beneficiary to whom the foregoing and attached certificate was, upon the

..... day of....., 19..., issued by the Commissioner of the General Land Office under section 2306 of the Revised Statutes of the United States, and the same....., to whom, as a bona fide purchaser and owner thereof such original certificate was, upon the..... day of....., recertified by the Commissioner of the General Land Office under the Act of Congress of August 18, 1894, and official circular of the General Land Office, dated October 16, 1894, do hereby sell and assign unto..... of..... in the..... and....., and to his heirs and assigns forever, the said certificate and the right of entry and location thereby secured, and authorize him to locate the said certificate and to enter lands therewith and to receive a patent for any land so located or entered.

.....(L. S.)

Attest

.....  
 .....  
 (Two witnesses)

#### ACKNOWLEDGMENT.

State of ..... } ss.  
 County of..... }

On the..... day of..... 19..., before me personally came....., to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said..... is the identical person to whom the within certificate was recertified upon the..... day of....., 19..., and who executed the foregoing assignment thereof. And I further certify that the said certificate, at the time of making the foregoing assignment, was attached to said assignment and was presented by and was in the possession of him, the said.....

#### ASSIGNMENT BY ASSIGNEE OF FIRST OWNER.

For Value Received, I, .....to whom the foregoing and attached certificate and right of entry and location thereby secured were assigned, do hereby sell and assign unto..... of....., in the.....and....., and to his heirs and assigns forever, the said certificate and right of entry and location, and authorize him to locate the said certificate and to enter lands therewith and to receive a patent for any lands so located or entered.

.....(L. S.)

Attest

.....  
 .....  
 (Two witnesses)

#### ACKNOWLEDGMENT.

State of ..... } ss.  
 County of..... }

On the..... day of..... 19..., before me personally appeared....., to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said..... is the identical person to whom the foregoing and attached certificate and right of entry and location thereby secured were on the..... day of..... 19..., heretofore assigned. And I further certify that the said certificate, at the time of making the foregoing assignment, was attached to said assignment, and was presented by and was in the possession of him, the said.....

Note—All subsequent assignment may follow substantially the above form.



# LOCATION OF WARRANTS, SERIP, CERTIFICATES, SOLDIERS' ADDITIONAL RIGHTS, ETC.

Circular.

Department of the Interior,  
General Land Office,  
Washington, D. C., February 21, 1908.

Registers and Receivers, United States Land Offices.

Gentlemen: In cases of applications to locate all serips, warrants, certificates, soldiers' additional homestead rights, or to make lieu selections of public lands of the United States, the following requirements will govern on and after April 1, 1908:

1. The location or selection must be accompanied, in addition to the evidence required by existing rules and regulations, by the affidavit of the locator, selector, or some credible person possessed of the requisite personal knowledge of the premises, showing that the land located or selected is not in any manner occupied adversely to the locator or selector.

2. You will require the locator or selector, within twenty days from the filing of his location or selection, to begin publication of notice thereof, at his own expense, in a newspaper to be designated by the Register as of general circulation in the vicinity of the land, and to be the nearest thereto. Such publication must cover a period of thirty days, during which time a similar notice of the location or selection must be posted in the local land office and upon the lands included in the location or selection, and upon each and every noncontiguous tract thereof.

3. The notice must describe the land located or selected, give the date of location or selection, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be mineral in character, an opportunity to file objection to such location or selection with the local officers for the land district in which the land is situate, and to establish their interest therein, or the mineral character thereof.

4. Proof of publication must consist of an affidavit of the publisher, or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. Proof that the notice remained posted upon the land during the entire period of publication must be made by the locator or selector or some credible persons having personal knowledge of the fact. The Register will certify to the posting in his office. The first and last days of such publication and posting must in all cases be given.

Very respectfully,

R. A. Ballinger,  
Commissioner.

Approved:

James Rudolph Garfield,  
Secretary.

## SERIP-APPLICATION TO LOCATE UPON UNSURVEYED LAND.

### Instructions.

Department of the Interior,  
General Land Office,  
Washington, D. C., December 22, 1908.

Registers and Receivers, United States Land Offices.

Gentlemen: Under regulations of June 17, 1874 (1 C. L. L., 806), relative to Valentine Serip, and May 28, 1878 (2 C. L. L., 1355), relative to Sioux Half Breed Serip, such serip, and other kinds of serip locatable on unsurveyed land, when located upon such land, have been retained with the location papers in local offices until the survey of the township embracing the land applied for has been made, the official plat filed, and the location adjusted to the survey.

It is deemed advisable to discontinue this practice. You are accordingly directed to transmit to this office, at once, all applications to locate serip on unsurveyed land, together with the serip, which were filed in your offices prior to April 1, 1908, with separate report in each case as to the status of the land applied for, and all other material facts affecting the case; also, with proper report, all applications and serip for unsurveyed land, filed subsequent to April 1, 1908, after the applicant has complied with the regulations of February 21, 1908 (36 L. D., 278). In all cases you will see that your records show, in

complete manner, the pendency of the application to locate such scrip. The papers will be kept in this office.

When survey has been made of the land involved in any application, and the plat has been filed in your office, you will promptly call the attention of this office to such application, giving such information as the records of your office indicate should be furnished concerning the application.

The applicant will be required, within three months from the date of the filing of the official plat of survey of the township embracing the land applied for, to make proof, in the form of an affidavit, corroborated, showing the legal subdivisions of his claim; whereupon the location, in the absence of any valid objection, will be consummated, and the location certificate, and other papers, will be transmitted to this office with your monthly returns. Should the applicant fail to make the adjustment, you will report the fact to this office, when appropriate action will be taken.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:

James Rudolph Garfield,  
Secretary.

### PRIVATE LAND CLAIM INDEMNITY SCRIP.

An Act defining the manner in which certain land scrip may be assigned and located, or applied by actual settlers, and providing for the issue of patents in the name of the locator or his legal representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, in cases prosecuted under the Acts of Congress of June twenty-second, eighteen hundred and sixty, March second, eighteen hundred and sixty-seven, and the first section of the Act of June tenth, eighteen hundred and seventy-two, providing for the adjustment of private land claims in the States of Florida, Louisiana, and Missouri, the validity of the claim has been, or shall be hereafter, recognized by the Supreme Court of the United States, and the Court has decreed that the plaintiff or plaintiffs is or are entitled to enter a certain number of acres upon the public lands of the United States subject to private entry at one dollar and twenty-five cents per acre, or to receive certificate of location for as much of the land the title to which has been established as has been disposed of by the United States; certificate of location shall be issued by the Commissioner of the General Land Office, attested by the seal of said office, to be located as provided for in the sixth section of the aforesaid Act of Congress of June twenty-second, eighteen hundred and sixty, or applied according to the provisions of the second section of this Act; and said certificate of location or scrip shall be subdivided according to the request of the confirmee or confirmees, and as nearly as practicable in conformity with the legal divisions and subdivisions of the public lands of the United States, and shall be, and are hereby declared to be assignable by deed or instrument of writing, according to the form and pursuant to regulations prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owners of the scrip, including the right to locate the scrip in his own name.

Sec. 2. That such scrip shall be received from actual settlers only; in payment of preemption claims or in commutation of homestead claims in the same manner and to the same extent as is now authorized by law in the case of military-bounty land warrants.

Sec. 3. That the Register of the proper land office, upon any such certificate being located, shall issue, in the name of the party making the location, a certificate of entry, upon which, if it shall appear to the satisfaction of the Commissioner of the General Land Office that such certificate has been fairly obtained, according to the true intent and meaning of this Act, a patent shall issue, as in other cases, in the name of the locator or his legal representative.

Sec. 4. That the provisions of this Act respecting the assignment and patenting of scrip and its application to preemption and homestead claims shall apply to the indemnity certificates of location provided for by the Act of the second of June, eighteen hundred and fifty-eight, entitled "An Act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes."

Approved, January 28, 1879. (20 Stat., 274.)



## **BOUNTY LAND WARRANTS—LAWS AND REGULATIONS— ASSIGNMENT, LOCATION AND USE.**

The circular and regulation issued March 28, 1902 (31 L. D., page 277, were modified and republished under circular No. 120, dated May 24, 1912. Will probably be published in Vol. 40 or Vol. 41 of Land Decisions.

### **SOLDIERS' AND SAILORS' HOMESTEAD RIGHTS.**

Department of the Interior,  
General Land Office,  
Washington, D. C., October 11, 1910.

Any officer, soldier, seaman, or marine, who served for not less than ninety days in the Army or Navy of the United States during the civil war and who was honorably discharged and has remained loyal to the Government, and who makes a homestead entry, is entitled under section 2305 of the Revised Statutes to have the term of his service in the Army or Navy, not exceeding four years, deducted from the period of five years' residence required under the homestead laws.

If the party was discharged from the service on account of wounds or disabilities incurred in the line of duty, the whole term of enlistment, not exceeding four years, is to be deducted from the homestead period of five years; but no patent can issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he commenced his improvements. (Sec. 2305, Rev. Stat.)

Similar provisions are made in the Acts of June 16, 1898 (30 Stat., 473), and March 1, 1901 (31 Stat., 847), for the benefit of like persons who served in the late war with Spain, or during the suppression of the insurrection in the Philippines.

No credit for military service can be allowed where commutation proof is submitted.

A party claiming the benefit of his military service must file with the Register and Receiver a certified copy of his certificate of discharge, showing when he enlisted, when he was discharged, and the organization in which he served, or the affidavit of two respectable, disinterested witnesses, corroborative of the allegations contained in his affidavit on these points, or if neither can be procured his own affidavit to that effect.

### **Periods of Service for Which Credit May Be Given in Lieu of Residence.**

In determining the rights of parties under sections 2304-2309 of the Revised Statutes the civil war is held to have lasted from April 15, 1861, to August 20, 1866; the Spanish war and Philippine insurrection from April 21, 1898, to July 15, 1903.

No credit for military service can be given unless a soldier or sailor served for at least ninety days between the dates above mentioned.

In computing the period of service of a soldier "who has served in the Army of the United States," within the meaning of that phrase as used in section 2304 of the Revised Statutes, the entrance

of the soldier into the army will be considered as dating from his muster into the service and not from his enlistment.

An entryman having enlisted and served ninety days during any one of the wars above mentioned is entitled under section 2305 of the Revised Statutes to credit for the full term of his service under that enlistment, although such term did not expire until after the war ceased.

A person who served for less than ninety days in the Army or Navy of the United States during said wars is not entitled to have credit for military service on the required period of residence upon his homestead, although he may have been discharged for disability incurred in line of duty.

A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing upon the land applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged. Such soldier or sailor is not required to reside personally upon the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is five years old, or until it has been commuted.

After an entryman under the enlarged homestead Act of February 19, 1909 (35 Stat., 639), or the Act of June 17, 1910 (36 Stat., 531), relating to Idaho, has resided upon the land embraced in his entry for such period, not less than one year, as will, with the term of his military service during the wars above mentioned, constitute five years, further residence need not be continued, but cultivation must be continued for the period required under said Acts. Persons who may be entitled to leave the land after they have resided thereon for such period as, with their military service, amounts to five years should not, however, do so without keeping the Register and Receiver of the local land office informed of their addresses so that in the event of contest they may be notified to defend their interests.

### **Homestead Rights of Widows and Minor Orphan Children of Deceased Soldiers and Sailors.**

If a soldier or sailor makes an entry or files a declaratory statement, and dies before perfecting the same, the right to perfect the claim, including the right to claim credit for the soldier's military service, passes to the persons named in section 2291, Revised Statutes; that is, to his widow, or, if there be no widow, to his heirs or devisees.

In case of the death of any person who would be entitled to a homestead under the provisions of section 2304 of the Revised Statutes, but who died prior to the initiation of a claim thereunder, his widow, or in case of her death or remarriage, his minor orphan children by a guardian, duly appointed and officially accredited at the Department of the Interior, may make the filing and entry in the same manner that the soldier or sailor might have done, subject to all the provisions of the homestead laws in respect to settlement and improvements; and the whole term of service, or in case of death during the term of enlistment, the entire period of enlistment in the military or naval service shall be deducted from the time otherwise



required to perfect the title to the same extent as might have been allowed the soldier. (Sec. 2307, Rev. Stat.)

Where a homestead entry is made under section 2307, Revised Statutes, by the widow or minor orphan children of a deceased soldier or sailor, compliance with law both as to residence and improvement is required to be shown to the same extent as would have been required of the soldier or sailor in making entry under section 2304, Revised Statutes, except that credit will be given upon the five-year period for the entire term of the enlistment where the soldier or sailor died during the term of his enlistment. See departmental decision in case of Anna Bowes (32 L. D., 331).

In case of widows, the prescribed evidence of military service of the husband must be furnished, with affidavit of widowhood, giving the date of her husband's death.

In case of minor orphan children, in addition to the prescribed evidence of military service of the father, proof of death or remarriage of the mother must be furnished. Evidence of death may be the testimony of two witnesses or a physician's certificate, duly attested. Evidence of marriage may be certified copy of marriage certificate, or of record of same, or testimony of two witnesses to the marriage ceremony.

Minor orphan children must make a joint entry through their duly appointed guardian, who must file certified copies of the powers of guardianship, which must be transmitted to the General Land Office by the Registers and Receivers.

### **Soldiers' Declaratory Statements.**

Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any person entitled to the benefits of sections 2304 and 2307, Revised Statutes, as explained above. Declaratory statements of this character may be filed either in person or through an agent acting under power of attorney, but the entry must be made in person, and not through an agent, within six months from the filing of the declaratory statement, and residence must also be established within that time.

The party entitled to file a declaratory statement may make entry in person without filing a declaratory statement if he so desires.

The soldiers' declaratory statement, if filed in person, must be accompanied by the prescribed evidence of military service and the oath of the person filing the same, stating his residence and postoffice address, and setting forth that the claim is made for his exclusive use and benefit for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person; that he has not heretofore made a homestead entry, or filed a declaratory statement under the homestead law (or if he has done so, he must show his qualifications to make a second or additional homestead entry); that he is not the proprietor of more than 160 acres of land in any State or Territory; and that since August 30, 1890, he has not entered or acquired title under the agricultural land laws of the United States, nor is he now claiming under said laws a quantity of land, which with the tracts applied for would make more than 320

acres, or, in the case of a claim under the enlarged homestead laws, 480 acres.

In case of filing a soldier's declaratory statement by agent, the oath must further declare the name and authority of the agent and the date of the power of attorney or other instrument creating the agency, adding that the name of the agent was inserted therein before its execution. It should also state in terms that the agent has no right or interest, direct or indirect, in the filing of such declaratory statement.

The agent must file (in addition to his power of attorney) his own oath to the effect that he has no interest, either present or prospective, direct or indirect, in the claim; that the same is filed for the sole benefit of the soldier, and that no arrangement has been made whereby said agent has been empowered at any future time to sell or relinquish such claim, either as agent or by filing an original relinquishment of the claimant.

Where a soldier's declaratory statement is filed in person the affidavit of the soldier or sailor must be sworn to before either the Register or the receiver, or before a United States commissioner, or a United States court commissioner, or judge, or clerk of a court of record in the county or land district in which the land sought is situated. Where a declaratory statement is filed by an agent, the agent's affidavit must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer having a seal and authorized to administer oaths generally, and not necessarily within the land district in which the land is situated.

The fee to be paid to the Register and Receiver of the land office where the declaratory statement is filed is \$2, except in the Pacific States and Territories, where it is \$3.

A homestead entry under a declaratory statement can not be made through an agent, and the entry must be made and settlement on the land commenced within six months after the filing of the declaratory statement, and the party must continue to reside on the land and cultivate it for such period as, added to his military service, will make five years. But he must actually reside upon the land at least one year, whatever may have been the period of his military or naval service.

The filing of a declaratory statement will not be held to bar the admission of filings and entries by others, but any person making entry or claim during the period allowed by law for the entry of the soldier will do so subject to his right; and the soldier's application, when offered within such time, will be allowed as a matter of right, and the intervening claimant will be notified and afforded an opportunity to be heard.

As implied by the requirements of the oath, a soldier will be held to have exhausted his homestead right by the filing of his declaratory statement, it being manifest that the right to file is a privilege granted to soldiers in addition to the ordinary privilege only in the matter of giving them power to hold their claims for six months after selection before entry, but is not a license to abandon such selection with the right thereafter to make a regular homestead entry independently of such filing. This is clear from the statutory language. Section 2304 provides: "A settler shall



be allowed six months after locating his homestead and filing his declaratory statement in which to make entry and commence his settlement and improvement;" and section 2309 requires him "in person" to "make his actual entry, commence settlement and improvement on the same, and thereafter fulfill all the requirements of the law." These must be done on the same lands selected and located by the filing.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved.

Jesse E. Wilson,  
Acting Secretary.

### Revised Statutes.

Sec. 2293. In case of any person desirous of availing himself of the benefits of this chapter, but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land office which the preceding sections require; and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona fide improvement and settlement have been made, such person may make the affidavit required by law before the officer commanding in the branch of the service in which the party is engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the Register or Receiver; and upon such affidavit being filed with the Register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the application and affidavit are accompanied by the fee and commissions as required by law.

Sec. 2304. Every private soldier and officer who has served in the Army of the United States during the recent rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an Act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, and every private soldier and officer who has served in the Army of the United States during the Spanish war, or has served, is serving, or shall serve in the said army during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged; and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the Spanish war, or who has served, is serving, or shall have served in the said forces during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work

not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement. (As amended by Act March 1, 1901.)

Sec. 2305. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements: Provided, That in every case in which a settler on the public land of the United States under the homestead laws died while actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the war with Spain or the Philippine insurrection, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, may proceed forthwith to make final proof upon the land so held by the deceased soldier and settler, and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation for the full period of five years, and shall entitle his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, to make final proof upon and receive government patent for said land; and that upon proof produced to the officers of the proper local land office by the widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, that the applicant for patent is the widow, if unmarried, or in case of her death or marriage, his orphan children or his or their legal representatives, and that such soldier, sailor, or marine died while in the service of the United States as hereinbefore described, the patent for such land shall issue. (As amended by Act March 1, 1901.)

“Sec. 2306. Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead, who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.”

For secs. 2304, 2305, 2307, and 2309, see pages ———.

Sec. 2307. In case of the death of any person who would be entitled to a homestead under the provisions of section two thousand three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and



improvement therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

\* \* \* \* \*

Sec. 2309. Every soldier, sailor, marine, officer, or other person coming within the provisions of section two thousand three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in pre-emption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill the requirements of the law.

See Three-Year Homestead Law and Regulations Thereunder, page 473.

#### **SOLDIERS' ADDITIONAL HOMESTEADS.**

##### **Lands in Former Indian Reservations in Montana Made Subject to—Entries Heretofore Made Validated.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section three of the Act of May first, eighteen hundred and eighty-eight, ratifying and confirming an agreement with the various tribes or bands of Indians residing upon the Gros Ventre, Piegan, Blood, Blackfoot, and River Crow Reservations, in Montana Territory, be, and the same is hereby, amended so as to read as follows:

“Sec. 3. That lands to which the right of the Indians is extinguished under the foregoing agreement are a part of the public domain of the United States and are open to the operation of laws regulating the entry, sale, or disposal of the same: Provided, That no patent shall be denied to entries heretofore made in good faith under any of the laws regulating entry, sale, or disposal of public lands, if said entries are in other respects regular and the laws relating thereto have been complied with.”

(Public No. 462, Approved, March 3, 1911.)

##### **REGULATIONS UNDER TIMBER AND STONE LAW ACT OF JUNE 3, 1878, AND ACTS AMENDATORY. APPROVED NOVEMBER 30, 1908. REVISED AND APPROVED AUGUST 22, 1911.—CIRCULAR NO. 50.**

Department of the Interior,  
General Land Office,  
Washington, D. C., November 30, 1908.

Registers and Receivers,  
United States Land Offices.

Sirs: The regulations under the Act of June 3, 1878 (20 Stat., 89), and amendatory acts, commonly known as the timber and stone law, are hereby revised, modified, and reissued as follows:

#### **Provision for Appraisement.**

Any lands subject to sale under the foregoing Acts, may, under the direction of the Commissioner of the General Land Office, upon application or otherwise, be appraised by smallest legal subdivisions, at their reasonable value, but at not less than \$2.50 per acre; and hereafter no sales shall be made under said Acts except as provided in these regulations.

#### **Character of Lands Subject to Entry.**

All unreserved, unappropriated, nonmineral, surveyed, public lands within the public-land States, which are valuable chiefly for

the timber or stone thereon and unfit for cultivation at the date of sale, may be sold under this Act at their appraised value, but in no case at less than \$2.50 per acre, in contiguous legal subdivisions upon which there is no existing mining claim, or the improvements of any bona fide settler claiming under the public-land laws. The terms used in this statement may be defined substantially as follows for the purpose of construing and applying this law:

2. Unreserved and unappropriated lands are lands which are not included within any military, Indian, or other reservation, or in a national forest, or in a withdrawal by the Government for reclamation or other purposes, or which are not covered or embraced in any entry, location, selection, or filing which withdraws them from the public domain.

3. Unoccupied lands are lands belonging to the United States upon which there are no improvements belonging to any person who has initiated and is properly maintaining a valid mining or other claim to such lands under the public land laws. Abandoned and unused mines, shafts, tunnels, or buildings occupied by mere trespassers not seeking title under any law of the United States, do not prevent timber and stone entries if the land is otherwise capable of being so entered.

4. Nonmineral lands are such lands as are not known to contain any substance recognized and classed by standard authorities as mineral, in such quantities and of such qualities as would, with reasonable prospects of success in developing a paying mine thereon, induce a person of ordinary prudence to expend the time and money necessary to such development.

5. Timber is defined as trees of such kind and quantity, regardless of size, as may be used in constructing buildings, irrigation works, railroads, telegraph and telephone lines, tramways, canals, or fences, or in timbering shafts and tunnels or in manufacturing, but does not include trees suitable for fuel only.

6. Lands valuable chiefly for timber, but unfit for cultivation are lands which are more valuable for timber than they are for cultivation in the condition in which they exist at the date of the application to purchase, and therefore include lands which could be made more valuable for cultivation by cutting and clearing them of timber. The relative values for timber or cultivation must be determined from conditions of the land existing at the date of the application to purchase.

7. Lands in all public land States may be entered, but timber and stone entries can not be made in the Territories or in the District of Alaska.

#### **By Whom Entries May Be Made.**

8. One timber and stone entry may be made for not more than 160 acres (a) by any person who is a citizen of the United States, or who has declared his intention to become such citizen, if he is not under 21 years of age, and has not already exhausted his right by reason of a former application for an entry of that kind; or has not already acquired title to or is not claiming under the homestead or desert-land laws through settlement or entry made since August 30, 1890, any other lands which, with the land



he applies for, would aggregate more than 320 acres; or (b) by an association of such persons, or (c) by a corporation, each of whose stockholders is so qualified.

9. A married woman may make entry if the laws of the State in which she applies permit married women to purchase and hold for themselves real estate, but she must make the entry for her own benefit, and not in the interest of her husband or any other person, and she will be required to show that the money she pays for the land was not furnished by her husband.

10. Any qualified person may obtain title under the timber and stone law by performing the following acts: (a) Personally examining the land desired; (b) presenting an application and sworn statement, accompanied by a filing fee of \$10; (c) depositing with the Receiver the appraised price of the land; (d) publishing notice of his application and proof; (e) making final proof.

11. Examination of the land must be made by the applicant in person not more than thirty days before the date of his application, in order that he may knowingly swear to its character and condition.

### **Application and Sworn Statement: Deposit.**

12. The application and sworn statement must contain the applicant's estimate of the timber, based on examination, and his valuation of the land and the timber thereon, by separate items. (See Form A, Appendix.) It must be executed in duplicate, after having been read to or by the applicant, in the presence of the officer administering the oath, and sworn to by him before such officer, who may be either the Register or the Receiver of the land district in which the land is located, a United States Commissioner, a judge or a clerk of a court of record in the county or parish in which the land is situated, or one of these officers outside of that county or parish, if he is nearer and more accessible to the land than any other qualified officer, and has his office or place of business within the land district in which the land is located. Each applicant must, at the time he presents his application and sworn statement, deposit with the Receiver, either in cash or in post-office money orders payable to the Receiver, a filing fee of \$10.

13. Applications by associations or corporations must, in addition to the facts recited in the foregoing statement, show that each person forming the association or holding stock in the corporation is qualified to make entry in his own right and that he is not a member of any other association or a stockholder in any other corporation which has filed an application or sworn statement for other lands under the timber and stone laws.

### **Disposition of Application.**

14. After application and deposit have been filed in proper form, as required by these regulations, the Register and Receiver will at once forward one copy of the application to the chief of field division having jurisdiction of the land described, who, if he finds legal objection to the allowance of the application, will return it to them with report thereon. The Register and Receiver will, if they concur in an adverse recommendation of the chief of field division, dismiss or deny the application, subject to the appli-

cant's right of appeal; but if they disagree with his recommendation, they will forward the record to the Commissioner of the General Land Office, with their report and opinion thereon, for such action as he may deem advisable.

If the chief of field division finds no such legal objection to the application, he shall cause the lands applied for to be appraised by an officer or employee of the Government. (Designation of Appraiser, Form B. Appendix.)

### **Appraisement: Method.**

15. The officer or employee designated to make the appraisement must personally visit the lands to be appraised, and thoroughly examine every legal subdivision thereof, and the timber thereon, and appraise separately the several kinds of timber at their stumpage value, and the land independent of the timber at its value at the time of appraisement, but the total appraisement of both land and timber must not be less than \$2.50 per acre. He must, in making his report, consider the quantity, quality, accessibility, and any other elements of the value of the land and the timber thereon. The appraisement must be made by smallest legal subdivisions, or the report must show that the valuation of the land and the estimate of the timber apply to each and every subdivision appraised. (See Form C, Appendix.)

### **Appraisement: Manner of Return: Approval.**

16. The completed appraisement must be mailed or delivered personally to the chief of field division under whose supervision it was made, and not to the applicant. Each appraisement upon which an entry is to be allowed must be approved respectively or conjointly as provided in these regulations, by the chief of field division under whose supervision it was made, by the Register and Receiver who allow the entry, or by the Commissioner of the General Land Office.

### **Appraisement: Disagreement Between Appraising and Approving Officers: How Determined.**

17. The chief of field division will return to the appraiser, with his objections, an appraisement which he deems materially low or high, and the appraiser shall, within twenty days from the receipt thereof, resubmit the papers, with such modifications or explanations as he may deem advisable or proper, upon receipt of which the chief of field division will either approve the schedule as then submitted, or forward the papers to the Register and Receiver, with his memorandum of objection. The Register and Receiver will thereunder consider the case. If they approve the appraisement, they will sign the certificate appended thereto, and advise the chief of field division thereof. If the Register and Receiver approve the objection of the chief of field division, they will so indicate, and if the appraising officer is an employee of the Interior Department, under the supervision of the chief of field division, they will return the papers to the chief of field division, who will thereupon order a new appraisement by a different officer. If, however, the Register and Receiver approve the objection of



the chief of field division, when the appraiser is an officer of another bureau of this department, or of another department, they will forward the record of the case to the Commissioner of the General Land Office, who will then determine the controversy.

### **Appraisement: Notation and Effect Thereof.**

18. When the appraisement is completed, the Register and Receiver will note the price on their records, and thereafter the land will be sold at such price only, under the provisions of the timber and stone Acts, unless the land shall have been reappraised in the manner provided herein. (See letter, February 28, 1910, page 583.)

### **Failure to Appraise: Rights of Applicant: How Terminated.**

19. Unless the Land Department, as hereinbefore provided, or otherwise, as directed by the Secretary of the Interior, shall appraise any lands applied for under these regulations within nine months from the date of such application, the applicant may, without notice, within thirty days thereafter, deposit the amount, not less than \$2.50 per acre, specified in his application as the reasonable value of the land and the timber thereon, with the Receiver, if appraisement has not been filed prior to such deposit, and thereupon will be allowed to proceed with his application to purchase as though the appraisement had been regularly made. The failure of the applicant to make the required deposit within thirty days after the expiration of the nine months' appraisement period will terminate his rights without notice.

### **Notice of Appraisement: Payment or Protest.**

20. The Register and Receiver, after noting the appraised price on their records, will immediately inform the applicant that he must, within thirty days from service of notice, deposit with the Receiver, either in lawful money or in post-office money orders payable to the Receiver, or as provided in section 36 hereof, the appraised price of the land and the timber thereon, or within the time allowed for payment file his protest against the appraisement, deposit with the Receiver a sum sufficient to defray the expenses of a reappraisement (which sum, not less than \$100, must be fixed by the Register and Receiver and specified in the notice to the applicant), together with his application for reappraisement at his own expense. (See Form D, Appendix.)

Notice should be given by registered letter and the envelope should be marked for return if not delivered within thirty days. If notice be returned after being held in the post office for thirty days, such proceedings will constitute constructive notice for thirty days.

### **Objection to Appraisement: Application for Reappraisement.**

21. Any applicant filing his protest against an appraisement, and his application for reappraisement, must support it by his affidavit, corroborated by two competent, credible, and disinterested persons, in which he must set forth specifically his objections

to the appraisalment. He must indicate his consent that the amount deposited by him for the reappraisalment, or such part thereof as is necessary, may be expended therefor, without any claim on his part for a refund or return of the money thus expended.

### **Reappraisalment.**

22. Upon the receipt of a protest against appraisalment and application for reappraisalment conforming to the regulations herein, the Register and Receiver will transmit such protest and application to the chief of field division, who will cause the reappraisalment to be made by some officer other than the one making the original appraisalment. The procedure provided herein for appraisalment will be followed for reappraisalment, except the latter, if differing from the former, must, to give it effect, be approved by the chief of field division and the Register and Receiver, or, in case of disagreement between them, by the Commissioner of the General Land Office. (Form E, Appendix.)

### **Notice of Appraisalment.**

23. When a reappraisalment is finally effected, the Register and Receiver will note the reappraised price on their records, and at once notify the applicant that he must, within thirty days from the date of notice, deposit with the Receiver the amount fixed by such reappraisalment for the sale of the land, or thereafter, and without notice, forfeit all rights under his application. (Form F, Appendix.)

### **Cost of Making Reappraisalment.**

24. The officer or employee of the United States making the reappraisalment shall be paid from the amount deposited with the Receiver by the applicant therefor, the salary, per diem, and other expenses to which he would have been entitled from the Government, in the case of an original appraisalment, for his services for the time he was engaged in making and returning the reappraisalment. The Receiver will, out of the money deposited by the applicant, pay such compensation, including reasonable expenses for subsistence, transportation, and necessary assistants; and the officer will deduct from his expense account with the Government the amount which he has received from the Receiver for such services. The Receiver will return to the applicant the amount, if any, remaining on deposit with him after paying the expenses of said reappraisalment.

### **Final Proof.**

25. After the appraisalment or reappraisalment and deposit of purchase money and fee have been made the register will fix a time and place for the offering of final proof, and name the officer before whom it shall be offered and post a notice thereof in the land office and deliver a copy of the notice to the applicant, to be by him and at his expense published in the newspaper of accredited standing and general circulation published nearest the land applied for. This notice must be continuously published in the paper for sixty days prior to the date named therein as the day upon which final proof must be offered. (Form "G," appendix.)



### **Time, Place, and Method of Making Final Proof.**

26. Final proof should be made at the time and place mentioned in the notice, and, as a part thereof, evidence of publication, as required by the previous paragraph, should also be filed. If final proof is not made on that day or within ten days thereafter, the applicant may lose his right to complete entry of the land. Upon satisfactory showing, however, explaining the cause of his failure to make the proof as above required, and in the absence of adverse claim, the Commissioner of the General Land Office may authorize him to readvertise and complete entry under his previous application. (See Form "H," Appendix.)

### **Final Entry.**

27. After an appraisalment or reappraisalment has been approved, the payments made, and satisfactory proof submitted in any case as required by these regulations, the Register and Receiver will, if no protest or contest is pending, allow a final entry.

### **General Provisions.**

#### **CONTESTS AND PROTESTS.**

28. Protest may be filed at any time before an entry is allowed, and contest may be filed at any time before patent issues, by any person who will furnish the Register and Receiver with a corroborated affidavit alleging facts sufficient to cause the cancellation of the entry, and will pay the cost of contest.

29. If an applicant swear falsely in his application or sworn statement, he will be liable to indictment and punishment for perjury; and if he be guilty of false swearing or attempted fraud in connection with his efforts to obtain title, or if he fail to perform any act or make any payment or proof in the manner and within the time specified in the foregoing regulations, his application and entry will be disallowed and all moneys paid by him will be forfeited to the Government, and his rights under the timber and stone Acts will be exhausted.

#### **EFFECT OF APPLICATION TO PURCHASE.**

30. After an application has been presented hereunder no other person will be permitted to file on the land embraced therein under any public-land law until such application shall have been finally disposed of adverse to the applicant.

31. Lands appraised or reappraised hereunder, but not sold, may, upon the final disallowance of the application, be entered by any qualified person, under the provisions of the timber and stone laws, at its appraised or reappraised value, if subject thereto.

32. Lands applied for but not appraised and not entered under these regulations may, when the rights of the applicant are finally terminated, be disposed of as though such application had not been filed.

33. Any lands which have not been reappraised may be reappraised upon the request of an applicant therefor under these regulations who complies with the requirements of section 21 hereof.

34. An applicant securing a reappraisalment under these Regu-

lations shall acquire thereby no right or privilege except that of purchasing the lands at their reappraised value, if he is qualified, and if the lands are subject to sale under his application; and he must otherwise comply with these Regulations, but shall not, in any event, be entitled to the return of any money deposited by him and expended in such reappraisement.

35. The Commissioner of the General Land Office may at any time direct the reappraisement of any tract or tracts of public lands, when, in his opinion, the conditions warrant such action.

36. Unsatisfied military bounty land warrants under any Act of Congress and unsatisfied indemnity certificates of location under the Act of Congress approved June 2, 1858, properly assigned to the applicant, shall be receivable as cash in payment or part payment for lands purchased hereunder at the rate of \$1.25 per acre.

37. Any application to purchase timber and stone lands filed before January 1, 1909, which does not conform to these regulations shall be suspended, and the Register and Receiver should at once notify the applicant that he may, if he so elect, file a new application conformable to these regulations within thirty days from the date of the notice, and that failure to file such new application within the time specified will work a forfeiture of all rights under his suspended application, which will thereupon stand rejected without further notice.

38. These regulations shall be effective on and after December 1, 1908, but all applications to purchase legally pending on November 30, 1908, may be completed by compliance with the regulations in force at the time such applications were filed.

39. The forms mentioned herein and included in the appendix hereto shall be a part of these regulations.

#### ENTRY OF STONE LANDS.

40. The foregoing regulations apply to entries of lands chiefly valuable for stone, and the forms herein prescribed can be modified in such manner as may be necessary to the making of entries of stone lands.

#### FORMER REGULATIONS REVOKED.

41. All former regulations, decisions, and practices in conflict with these regulations are hereby revoked.

Very respectfully,

Fred Dennett,  
Commissioner.

Approved:

James Rudolph Garfield,  
Secretary.

Revised and approved August 22, 1911.

Samuel Adams,  
Acting Secretary.

#### APPENDIX.

##### REGULATIONS APPROVED NOVEMBER 30, 1908.

##### Acts Relating to Timber and Stone Entries.

An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory.



Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That surveyed public lands of the United States within the States of California, Oregon, and Nevada, and in Washington Territory, not included within military, Indian, or other reservations of the United States, valuable chiefly for timber, but unfit for cultivation, and which have not been offered at public sale, according to law, may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding one hundred and sixty acres to any one person or association of persons, at the minimum price of two dollars and fifty cents per acre; and lands valuable chiefly for stone may be sold on the same terms as timber lands: Provided, That nothing herein contained shall defeat or impair any bona fide claim under any law of the United States, or authorize the sale of any mining claim, or the improvements of any bona fide settler, or lands containing gold, silver, cinnabar, copper, or coal or lands selected by the said States under any laws of the United States donating lands for internal improvements, education, or other purposes: And provided further, That none of the rights conferred by the Act approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An Act granting the right of way to ditch and canal owners over the public lands, and for other purposes," shall be abrogated by this Act; and all patents granted shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under and by the provisions of said Act; and such rights shall be expressly reserved in any patent issued under this Act.

Sec. 2. That any person desiring to avail himself of the provisions of this Act shall file with the Register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belonged to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this Act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself; which statement must be verified by the oath of the applicant before the Register or the Receiver of the land office within the district where the land is situated; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.

Sec. 3. That upon the filing of said statement, as provided in the second section of this Act, the Register of the land office shall post a notice of such application, embracing a description of the land by legal subdivisions, in his office, for a period of sixty days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the Register of the land office satisfactory evidence, first, that said notice of the application prepared by the Register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this Act, unoccupied and without improvement, other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the Register and Receiver, as provided for in case of mining claims in the twelfth section of the Act approved May tenth, eighteen hundred and seventy-two, the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon: Provided, That any person having a valid claim

to any portion of the land may object, in writing, to the issuance of a patent to lands so held by him, stating the nature of his claim thereto; and evidence shall be taken, and the merits of said objection shall be determined by the officers of the land office, subject to appeal, as in other land cases. Effect shall be given to the foregoing provisions of this Act by regulations to be prescribed by the Commissioner of the General Land Office.

\* \* \* \* \*

Sec. 6. That all Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed.

Approved, June 3, 1878. (20 Stat., 89.)

An Act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims: Provided, That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this Act.

Sec. 2. That an Act entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," approved June third, eighteen hundred and seventy-eight, be, and the same is hereby, amended by striking out the words "States of California, Oregon, Nevada, and Washington Territory" where the same occur in the second and third lines of said Act, and insert in lieu thereof the words "public-land States," the purpose of this Act being to make said Act of June third, eighteen hundred and seventy-eight, applicable to all the public-land States.

Sec. 3. That nothing in this Act shall be construed to repeal section twenty-four of the Act entitled "An Act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one.

Approved, August 4, 1892. (27 Stat., 348.)

An Act to provide for the location and satisfaction of outstanding military bounty land warrants and certificates of location under section three of the Act approved June second, eighteen hundred and fifty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the benefits now given thereto by law, all unsatisfied military bounty land warrants under any Act of Congress, and unsatisfied indemnity certificates of location under the Act of Congress approved June second, eighteen hundred and fifty-eight, whether heretofore or hereafter issued, shall be receivable at the rate of one dollar and twenty-five cents per acre in payment or part payment for any lands entered under the desert land law of March third, eighteen hundred and eighty- [seventy-] seven, entitled "An Act to provide for the sale of desert lands in certain States and Territories," and the amendments thereto, the timber-culture law of March third, eighteen hundred and seventy-three, entitled "An Act to encourage the growth of timber on the Western prairies," and the amendments thereto; the timber and stone law of June third, eighteen hundred and seventy-eight, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nebraska, and Washington Territory," and the amendments thereto, or for lands which may be sold at public auction, except such lands as shall have been purchased from any Indian tribe within ten years last past.

Approved, December 13, 1894. (28 Stat., 594.)

An Act to abolish the distinction between offered and unoffered lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in cases arising from and after the passage of this Act the distinction now obtaining in the statutes between offered and unoffered lands shall no longer be made in passing upon subsisting preemption claims, in disposing of the public lands under the homestead laws, and under the timber and stone law of June third, eighteen hundred and seventy-eight, as extended by the Act of August fourth, eighteen hundred and ninety-two, but in all such cases hereafter arising the land in question shall be treated as unoffered, without regard to whether it may have actually been at some time offered or not.

\* \* \* \* \*

Approved, May 18, 1898. (30 Stat., 418.)



An Act to amend the Act of Congress of March eleventh, nineteen hundred and two, relating to homesteads.

Sec. 2294 as amended by Act 4, 1904. (33 Stat., 59.) See page 286.

An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and other purposes.

Approved, August 30, 1890. (26 Stat., 391.) See pages 285, 344.

An Act to repeal the timber-culture laws, and for other purposes.

Sec. 17. (26 Stat., 1095.) See pages 389, 390.

The 320-acre limitation provided by the above Acts of August 30, 1890 (26 Stat., 391), and March 3, 1891 (26 Stat., 1095), applies to timber and stone entries. (33 L. D., 539, 605.)

### [Form A.]

## APPLICATION AND SWORN STATEMENT.

[To be made in duplicate.]

Act June 3, 1878, and Acts Amendatory.

Departmental Regulations Approved November 30, 1908.

United States Land Office,

—, 1908.

I, —, hereby make application to purchase the — quarter of section —, in township — and range —, in the State of —, and the timber thereon, at such value as may be fixed by appraisement, made under the authority of the Secretary of the Interior, under the Act of June 3, 1878, commonly known as the "Timber and stone law," and Acts amendatory thereof, and in support of this application I solemnly swear: That I am a native (or naturalized) citizen of the United States (or have declared my intention to become a citizen); that I am — years of age and by occupation —; that I did on —, 19—, examine said land, and from my personal knowledge state that said land is unfit for cultivation and is valuable chiefly for its timber, and that to my best knowledge and belief, based upon said examination, the land is worth — dollars, and the timber thereon, which I estimate to be — feet, board measure, is worth — dollars, making a total value for the land and timber of — dollars and no more; that the land is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal, or other minerals, salt springs or deposits of salt; that I have made no other application under said Acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit; that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself; that since August 30, 1890, I have not entered any acquired title to, nor am I now claiming, under an entry made under any of the non-mineral public land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres; that I am not a member of any association, or a stockholder in any corporation which has filed an application and sworn statement under said Act; and that my post-office address is —, at which place any notice affecting my rights under this application may be sent. I request that notice be furnished me for publication in the — newspaper, published at —.

Sign here with full Christian name

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known, or has been satisfactorily identified before me by — (give full name and postoffice address); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office in — (town), — (county and State), within the — land district this — day of —, 19—.

Official designation of officer.

In case the applicant has been naturalized or has declared his intention

to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

The newspaper designated must be one of general circulation, published nearest the land.

[Form B.]

DESIGNATION OF APPRAISER.

Departmental Regulations Approved November 30, 1908.

\_\_\_\_\_, 19\_\_.

Sir: You are designated to appraise the \_\_\_\_\_ quarter of section \_\_\_\_\_, township \_\_\_\_\_, \_\_\_\_\_, and range \_\_\_\_\_, \_\_\_\_\_, which embraces a total of \_\_\_\_\_ acres. This land has been applied for by \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, under the timber and stone law. If you accept this designation, it will be your duty to personally visit and carefully examine each and every legal subdivision of the land, and the timber thereon, and to make a return through this office of the approximate quantity, quality, and the stumpage cash value of the various kinds of timber, the cash value of the land, and the total value of the land and timber. The total appraisement of the land and timber, however, must not amount to less than two dollars and fifty cents per acre for each acre appraised. Each legal subdivision must be separately appraised, or your return must show specifically that the appraisement applies to each legal subdivision.

Please inform me as soon as possible, and not later than \_\_\_\_\_, 19\_\_, whether you will be able to do the work, and also advise me the approximate date the appraisal will be completed.

Very respectfully,

\_\_\_\_\_,  
Chief of Field Division, General Land Office.

[Form C.]

APPRAISAL, TIMBER AND STONE LANDS.

Act March 3, 1878, and Acts Amendatory.

Departmental regulations approved November 30, 1908.

Lot or quarter-quarter.	Kind of timber.	Quality of timber.	Board feet per tract.	Stumpage value per M.	Character of soil.	Value of land exclusive of timber.	Total value of land and timber per acre.	Value of land and timber per tract.

Logging:

Timber must be logged by ..... (wagon haul, flume, river driving, or railroad).

Distance logs or lumber are to be transported to market, ..... miles. Approximate cost per M for transportation of logs or lumber to market, ..... dollars. Accessible? ..... (yes or no). Manufacturing possible on the ground? ..... (yes or no). Will there be improvement in logging facilities in the vicinity? ..... (yes or no). Will the demand for timber products be likely to increase in the neighborhood in the near future? ..... (yes or no). Nearest available quotations on stumpage for the species estimated ..... .., 19\_\_.

STATEMENT BY APPRAISER.

I have carefully examined each and every legal subdivision of the ..... quarter of section ....., township ....., range ....., and the timber



thereon, and the estimates included in the above table and the foregoing statement were based on personal examination. I did not find any indication that the land or any part thereof contains any valuable mineral or coal deposits, and found no improvements or other evidence that any claim is being asserted under any of the public-land laws. I recommend that the application to purchase receive favorable action.

.....,  
Appraiser.

### ACTION ON APPRAISEMENT.

I have carefully examined the within appraisal and find no reason to believe that it is improperly made.

It is therefore, accordingly, approved.

.....,  
Chief of Field Division.

Note.—The approval of the appraisal by the chief of field division is final, and no action is required thereon by the register and receiver, except to note the appraised price on their records, and to issue the necessary notices. The register and receiver will, in the event of a disagreement between the appraiser and the chief of field division, and their concurrence with the appraiser, sign the following certificate:

United States Land Office, .....,

....., .....

.....,

We have carefully considered the within appraisal and the objections thereto urged by the chief of field division, and, believing that the appraisal is not materially high or low, the same is hereby approved.

....., Register.

....., Receiver.

Note.—If the register and receiver concur in the adverse objections of the chief of field division they will proceed in accordance with paragraph 17 of the Regulations approved November 30, 1908.

### SUGGESTIONS TO APPRAISERS.

The appraiser should fill in each blank carefully and legibly. Under the head of kinds of timber he should state the species, such as "yellow pine," "white pine," "Douglas fir," "spruce," etc. If there are more than four leading species, all others should be under the head of "Miscellaneous," in the fifth space. The quality of the timber should be judged as far as possible at local sawmills, and should be indicated by such descriptive words as "excellent," "good," "fair," and "poor."

In the first column to the left the description of the land should be given.

[Form D.]

### NOTICE TO APPLICANT OF APPRAISEMENT.

Departmental Regulations approved November 30, 1908.

United States Land Office,

.....,

.....

.....,

Sir: You are informed that the land, and the timber thereon, embraced in your timber and stone application No. ...., filed ..... , 19.., have been appraised in the total sum of ..... dollars.

You are therefore notified that your application for said lands will be dismissed without further notice, if you do not, within thirty days from service of this notice, deposit the appraised price of the land with the receiver of this office, or file your written protest against such appraisal, setting forth clearly and specifically your objection thereto, which protest must be sworn to by you, and corroborated by two competent, credible, and disinterested persons. The protest, if filed, must be accompanied by your application requesting that the land be reappraised at your expense, and you must deposit with the receiver

the sum of ..... dollars, to be expended therefor, and you must indicate your consent that the amount so deposited may be expended for the reappraisement, without any claim on your part that any portion thereof, so expended, shall be returned or refunded to you.

If a reappraisement is made under your application, you will secure no right or privilege, except that of purchasing the lands at their reappraised value, if they are subject to sale and you are properly qualified.

Very respectfully,

....., Register.  
....., Receiver.

---

[Form E.]

REAPPRAISEMENT.

Form C may be modified so as to show that the action taken is a reappraisement instead of an original appraisalment. The return of the appraising officer and indorsements by the chief of field division and the register and receiver must show that the action taken is a reappraisement, and it must be approved conjointly by the chief of field division and the register and receiver.

---

[Form F.]

NOTICE OF REAPPRAISEMENT.

Departmental Regulations approved November 30, 1908.

United States Land Office,

.....,  
.....

.....,

Sir: You are advised that, pursuant to your application, the ..... quarter of section ....., township ....., and range ....., and the timber thereon, embraced in your timber and stone sworn statement, No. ...., have been reappraised, and the price fixed at ..... dollars, which amount you must deposit with the receiver of this office within thirty days from service of notice hereof, or your application will be finally disallowed without further notice.

Very respectfully,

....., Register.  
....., Receiver.

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[Form G.]

NOTICE OF APPLICATION TO PURCHASE UNDER TIMBER AND STONE LAWS.

Departmental Regulations approved November 30, 1908.

United States Land Office,  
....., 19..

Notice is hereby given that ..... whose post-office address is ....., did on the ..... day of ....., 19.., file in this office his sworn statement and application No. .... to purchase the ..... quarter of section ....., township ....., range ....., ..... M., and the timber thereon, under the provisions of the Act of June 3, 1878, and acts amendatory, known as the "Timber and stone law," at such value as might be fixed by appraisalment, and that, pursuant to such application, the land and timber thereon have been appraised, the timber estimated ..... board feet, at \$..... per M, and the land \$....., or combined value of the land and timber at \$.....; that said applicant will offer final proof in support of his application and sworn statement on the ..... day of ....., 19.., before ....., at ..... Any person is at liberty to protest this purchase before entry, or initiate a contest at any time before patent issues, by filing a corroborated affidavit in this office, alleging facts which would defeat the entry.

....., Register.

Where notice is issued under section 19, the register will modify the blank so as to show the valuation placed on the land and the timber thereon was that



made by the applicant when he filed his sworn statement, instead of being fixed by appraisement.

[Form H.]

TIMBER OR STONE ENTRY.

(4—370a.)

Departmental Regulations approved by the Secretary of the Interior November 30, 1908.

Department of the Interior.

U. S. Land Office, ..... .., No. ....  
Receipt No. ....

Final Proof.

I hereby solemnly swear that I am the identical ..... .., who presented sworn statement and application, No. ...., for ..... .., section ..... .., township ..... .., range ..... .., ..... .. meridian; that the land is valuable chiefly for its timber, and is, in its present condition, unfit for cultivation; that it is unoccupied and without improvements of any character, except for ditch or canal purposes, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, coal, salines, or salt springs.

..... ..,  
(Sign here, with full Christian name.)

..... ..  
(Post-office address.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by ..... ..;

(Give full name and post-office address.)

that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in ..... .., within the ..... land

(Town.) (County and State.)

district, this ..... day of ..... , 19..

..... ..,  
..... ..  
(Official designation of officer.)

This form of proof can be accepted only where the land embraced in the application to purchase has been appraised or reappraised pursuant to the provisions of the Timber and Stone Regulations approved November 30, 1908, by the Secretary of the Interior.

Proof supporting applications to purchase under section 19 of the said regulations or under applications pending November 30, 1908, must be made by the applicant and two witnesses, as required by the regulations in force prior to December 1, 1908. (See Forms 4—370 and 4—371.)

[To be used only when sale is made under section 19 of the regulations approved November 30, 1908, and in sales under applications pending November 30, 1908.]

(4—370.)

(Form approved by the Secretary of the Interior November 12, 1907.)

TIMBER OR STONE ENTRY.

Department of the Interior.

U. S. Land Office, ..... .., ....

Testimony of Claimant.

I, ..... .. (give full Christian name), being duly called as a witness in support of my application to purchase the ..... .., section ..... .., township ..... .., range ..... .., ..... .. meridian, testify as follows:

Question 1. What is your age, occupation, post-office address, and where do you live?

Answer. .... ..

Question 2. Are you a native-born citizen of the United States; and, if so, in what State or Territory were you born? Are you married or single?

Answer. .... ..

Question 3. Are you the identical person who applied to purchase this land on the ..... day of ..... , 19.., and made the sworn statement required by law upon that day?

- Answer. ....
- Question 4. Have you made a personal examination of each smallest legal subdivision of the land applied for?
- Answer. ....
- Question 5. When, under what circumstances, and with whom was such examination made?
- Answer. ....
- Question 6. How did you identify said land? Describe it fully.
- Answer. ....
- Question 7. Is the land occupied, or are there any improvements on it? If so, describe them and state whether they belong to you.
- Answer. ....
- Question 8. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?
- Answer. ....
- Question 9. What is the situation of this land, what is the nature of the soil, and what causes render the same unfit for cultivation?
- Answer. ....
- Question 10. Are there any salines or indications of deposits of gold, silver, cinnabar, copper, coal, or other minerals on this land? If so, state what they are.
- Answer. ....
- Question 11. Is the land valuable for mineral, or more valuable for any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone? (Answer each question.)
- Answer. ....
- Question 12. From what facts do you conclude that the land is chiefly valuable for timber and stone?
- Answer. ....
- Question 13. How many thousand feet, board measure, of lumber do you estimate that there is on this entire tract? What is the stumpage value of same?
- Answer. ....
- Question 14. Are you a practical lumberman or woodsman? If not, how do you arrive at your estimate of the quantity and value of lumber on the tract?
- Answer. ....
- Question 15. What do you expect to do with this land and the timber when you get title to it?
- Answer. ....
- Question 16. Do you know of any capitalist or company which has offered to purchase timber land in the vicinity of this entry? If so, who are they, and how do you know them?
- Answer. ....
- Question 17. Has any person offered to purchase this land if you acquire title? If so, who, and for what amount?
- Answer. ....
- Question 18. Where is the nearest and best market for the timber on this land at the present time?
- Answer. ....
- Question 19. What has been your occupation during the past year; where and by whom have you been employed, and at what compensation?
- Answer. ....
- Question 20. How did you first learn about this particular tract of land, and that it would be a good investment to buy it?
- Answer. ....
- Question 21. Did you pay or agree to pay anything for this information? If so, to whom, and the amount?
- Answer. ....
- Question 22. Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?
- Answer. ....
- Question 23. Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?
- Answer. ....
- Question 24. Have you kept a bank account during the past six months? If so, where?



Answer. ....

Question 25. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?

Answer. ....

Question 26. Do you make this entry in good faith for the appropriation of the land and the timber thereon exclusively for your own use and not for the use or benefit of any other person?

Answer. ....

Question 27. Has any person other than yourself, or any firm, corporation, or association any interest in the entry you are now making, or in the land or in the timber thereon?

Answer. ....

\* Question 28. Have you since August 30, 1890, entered and acquired title to, or are you now claiming, under an entry made under any of the nonmineral public-land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres?

Answer. ....

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above deposition will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code, below.) In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land, or of any right, title, or claim thereto, are absolutely null and void as against the United States.

\* Note.—In addition to the foregoing testimony the officer before whom the proof is made will ask such questions as seem necessary to bring out all the facts in the case.

I hereby certify that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that deponent is to me personally known [or has been satisfactorily identified before me by ..... (give full name and post-office address)]; that I verily believe deponent to be a qualified claimant and the identical person hereinbefore described, and that said deposition was duly subscribed and sworn to before me, at my office, in ..... (town), ..... (county and State), within the ..... land district, this ..... day of ....., 19..

I further certify that I tested the accuracy of affiant's information and good faith in making the entry, by close and sufficient cross-examination of claimant and the witnesses, and am satisfied from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest of, nor for the benefit of, any other person or persons, firm, or corporation.

.....

.....  
Official designation of officer.

Sec. 125, United States Criminal Code.—Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

(4—371.)

(Form approved by the Secretary of the Interior November 12, 1907.)

### TIMBER OR STONE ENTRY.

Department of the Interior.

U. S. Land Office, ..... , ....

Testimony of Witness.

I, ..... (give full Christian name), being duly called as a witness in support of the application of ..... (give full Christian name), filed at the ..... land office, to purchase the ..... section ....., township ....., range ....., ..... meridian, testify as follows;

Question 1. What is your age, occupation, post-office address, and where do you live?

Answer. ....

Question 2. By whom have you been employed during the last six months?

Answer. ....

Question 3. Are you acquainted with the land above described by a personal examination of each of its smallest legal subdivisions? Describe the tract fully.

Answer. ....

Question 4. When, with whom, and in what manner was such examination made?

Answer. ....

Question 5. Is it occupied or are there any improvements on it not made for ditch or canal purposes, or which were not made by, or do not belong to, the said applicant?

Answer. ....

Question 6. Is it fit for cultivation?

Answer. ....

Question 7. What causes render it unfit for cultivation?

Answer. ....

Question 8. Are there any salines or indications of deposits of gold, silver, cinnabar, copper, coal, or other minerals on this land? If so, state what they are.

Answer. ....

Question 9. Is the land valuable for mineral, or more valuable for any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone? (Answer each question.)

Answer. ....

Question 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Answer. ....

Question 11. How long have you known the applicant?

Answer. ....

Question 12. What is his financial condition so far as you know?

Answer. ....

Question 13. Do you know of your own knowledge that applicant has sufficient money of his own to pay for this land and hold it six months without mortgaging it?

Answer. ....

Question 14. Do you know whether the applicant has, directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever by which the title he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Answer. ....

\* Question 15. Are you in any way interested in this application or in the land above described, or the timber or stone, salines, mines, or improvements of any description thereon?

Answer. ....

Sign here with full Christian name

Note.—Every person swearing falsely to the above deposition will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code, below.)

\* Note.—In addition to the foregoing testimony, the officer before whom the proof is made will ask such questions as seem necessary to bring out all the facts in the case.

I hereby certify that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that deponent is to me personally known [or has been satisfactorily identified before me by ..... (give full name and post-office address)]; that I verily believe deponent to be a credible witness and the identical person hereinbefore described, and that said deposition was duly subscribed and sworn to before me, at my office, in ..... (town), ..... (county and State), within the ..... land district, this ..... day of ....., 19..

.....  
.....  
Official designation of officer.



Sec. 125, United States Criminal Code.—Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

Department of the Interior,  
General Land Office,  
Washington, D. C., February 28, 1910.

Registers and Receivers,

United States Land Offices.

Gentlemen: Under the timber and stone regulations approved November 30, 1908 (37 L. D., 289, par. 18), you are directed to note the price fixed by appraisalment on your records, and advised that thereafter the land will be sold at that price only under the timber and stone law, unless subsequently reappraised.

Hereafter, in addition to the notation directed by paragraph 18, you will note on your serial register, as a part of your office record of each timber and stone application, the date of appraisalment, amount of timber, separate values given land and timber, and such other data as would be needed by your office in the event the original application fails of perfection and subsequent application is made for the land at its appraised valuation.

This will avoid the necessity of calling upon this office for the return of the record of appraisalment in such cases.

Very respectfully,

S. V. Proudfit,  
Commissioner.

## **LAWS AND REGULATIONS CONCERNING THE FREE USE OF TIMBER UPON PUBLIC MINERAL LANDS.**

(For form of application see pages 997 and 998.)

The Act of June 3, 1878, chapter 150 (20 Stat., 88), provides:

"That all citizens of the United States and other persons, bona fide residents of the State of Colorado or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide citizens, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: Provided, The provisions of this Act shall not extend to railroad corporations."

### **REGULATIONS.**

In pursuance of the authority granted in the above section of the Act of June 3, 1878, the following rules and regulations are hereby prescribed for the protection of the timber and of the undergrowth upon such lands, and for other purposes incidental thereto. The attention of persons seeking the free use of timber is particularly called to the fact that this Act does not authorize the cutting of timber from any lands subject to any form of nonmineral entry. The Act applies only to lands subject to mineral entry. Lands subject to mineral entry are such lands as are known to contain such deposits of mineral as warrant a prudent person in expending his time or money in the reasonable expectation of developing a mine thereon. The proper protection of the timber and undergrowth upon lands to be cut over necessarily varies with the nature of topography, soil, and forests.

First. Qualified persons within the States and Territories named desiring to take timber for purposes authorized by law must make application for permit to cut timber, such application to be presented or mailed to any Register or Receiver, or to the Chief of Field Division having jurisdiction over the land.

Second. Such application shall set forth the names and legal residence of persons applying to fell and remove, and the names and residence of persons who are to use, the timber; also the amount of timber required by each person, and the use to be made thereof, and the date it is desired to begin cutting; also, the lands to be cut over shall be so described in the application that they may be identified from the description set forth. The application must be verified by an applicant. Blank forms for making applications may be procured by addressing the Chief of Field Division.

Third. Immediately upon receipt of an application, the Chief of Field Division shall cause investigation to be made of the lands, and of material statements in the application. If the Chief of Field Division finds the timber may be cut for the purposes permitted by law, he may authorize cutting to proceed at once under such named restrictions (within the scope of these regulations) as the protection of the timber and undergrowth may require. Such permit, or refusal to grant permit, shall be subject to revision by the Commissioner of the General Land Office.

Fourth. Upon completing investigation of any application, the Chief of Field Division shall make report to the Commissioner of the General Land Office. His report shall contain the application, copy of his permit or letter declining to grant permit, and shall further show (1) whether the lands are mineral, (2) whether persons named in application are (a) qualified to fell and remove, and (b) authorized to use the timber as stated, (3) what percentage of the matured timber may be taken consistent with proper protection of the remaining timber and undergrowth, with the facts upon which he bases his conclusions; and what method of handling the tops, lops, and debris made by logging is necessary for the protection of timber and undergrowth, and the facts upon which his conclusions are based.

Fifth. Permits granted shall specify (1) the persons authorized to fell and remove, and those authorized to use, with amount and use stated as to each person; (2) identify the lands to be cut over; (3) that only matured timber may be taken, and the percentage of the total stand, acre by acre, to be cut; (4) the method of disposing of the tops and other debris; and (5) that the cutting authorized shall be completed within twelve months of date of permit, or application for renewal must be made.

Sixth. No timber may be cut in advance of a determined lawful use.

Seventh. No timber not matured may be cut. Each matured tree taken shall be worked up and utilized for some beneficial domestic purpose. Persons taking timber for specific purposes will be required to take only such matured trees as will work up to such purpose without unreasonable waste.

Eighth. Brush, tops, lops, and other forest debris made in felling and removing timber shall be disposed of in the manner best adapted to protecting the remaining growth, and as stated in the permit granted.

Ninth. No timber cut or removed under the provisions of this Act may be transported from or used out of the State or Territory where cut.

Tenth. Persons who commence cutting upon permit of Chief of Field Division before final approval by the Commissioner will be liable to the Government for a reasonable stumpage for timber so taken in event the permit is not finally approved by the Commissioner because improperly granted. Where permits are secured by fraud, or immature trees are taken, or timber is not taken or used by persons in accordance with the terms of the law, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

Eleventh. Registers or receivers receiving applications under this Act will at once forward same to the proper Chief of Field Division, and notify the applicant thereof.

Twelfth. Registers and receivers are required to ascertain from time to time whether any timber is being cut from mineral lands, except as provided by this Act, and notify the Commissioner of the General Land Office, or a special agent of such office, who will make any investigation required. Special agents will also keep informed of all timber cutting within their territory.

Thirteenth. These rules and regulations shall be in force from and after May 1, 1909, and supersede all prior regulations hereunder.

Approved March 16, 1909.

R. A. Ballinger,

Secretary.

Fred Dennett,

Commissioner.



## TIMBER CUTTING.

See table of circulars, instructions, and regulations under following subjects.

Timber Cutting.

Protection of Timber.

Cutting Mesquite.

Exportation of Timber.

Logging Regulations.

Cutting Timber for the Use of Mining.

"Until the homestead entry is finally perfected the land belongs to the Government; the settler may use the timber on the land for fencing or other needful purposes; a prior occupant has no right to rails or other timber cut upon it."

Wesley Procop, 2 L. D., 815.

"A settler upon unsurveyed land, with bona fide intent of residence and cultivation, and taking the land under settlement laws, when surveyed, may cut and sell the timber thereon."

John W. Baird, 2 L. D., 817.

"A bona fide settler may dispose of down and fallen timber on his claim for improvements and support while perfecting title."

Mary A. Maxfield, 3 L. D., 63.

Timber taken under Act of March 3, 1875, for purposes of construction only.

Denver & Rio Grande Ry. Co., 6 L. D., 449.

"Permits will not be issued under Section 8, Act of March 3, 1891, to cut timber from the unsurveyed land within the primary limits of the Northern Pacific grant in the absence of a showing that the land is mineral in character."

N. P. R. R. Co., 14 L. D., 126. Instructions, 18 L. D., 74.

"Permits to place portable sawmills in the vicinity of dead and down timber, and under the provisions of the Act of June 7, 1897, for the purpose of manufacturing such timber into lumber, may be granted, where the applicant enters into a contract in the form prescribed by the regulations of September 28, 1897, and submits proof as to the present unpracticability of marketing the timber."

Theo. D. Beaulieu, 26 L. D., 86.

Cities and towns are "residents of the State in which they are located within the meaning of that term as used in Section 8, of the Act of March 3, 1891, as amended, conferring upon the residents of certain States and Territories authority to cut timber upon the public lands for agricultural, mining, manufacturing, or domestic purposes.

"Timber used by cities for constructing electric light plants and building bridges, and by counties for building bridges and constructing flumes across the county roads is used for 'domestic purposes' within the meaning of Section 8 of the Act of March 3, 1891, as amended."

City and County of Beaver, 34 L. D., 112.

"The authority and permission to fell and remove timber and trees, conferred by the Act of June 3, 1878 (20 Stat., 88), extends only to the public mineral lands susceptible of mineral entry alone. The Act does not, as to such lands, secure to miners of the vicinity an exclusive right of timber proportion. If any given tract is in fact mineral in character, title to the land, together with the timber thereon, may be acquired under the mining laws, and if vacant and nonmineral available chiefly for timber but unfit for cultivation, containing no mining or other value, may be purchased under the conditions as prescribed by the Act of June 3, 1878 (3 Stat., 88), 35 L. D., 90.

Regulations, 37 L. D., 492; 39 L. D., 75.

## WIDOWS AND HEIRS OF HOMESTEAD SETTLERS AND ENTRYMEN.

The Act of June 6, 1912, amended Sec. 2291 of the Revised Statutes, providing, among other things:

That when the person making entry dies before the offer of final proof is accepted, the entry must show that the entryman had complied with the law in all respects up to the date of his death, and that they have since complied with the law in all re-

spects, as would have been required of the entryman had he lived, excepting that they are relieved from any requirement of residence upon the land.

For rights of widows, heirs, or devisees under the homestead laws, see "Suggestions to Homesteaders and Persons Desiring to Make Homestead Entries."

Where both parties die leaving infant children the homestead may be sold for cash for the benefit of such children and the purchaser shall receive title from the United States; or residence and cultivation may continue for the prescribed period, when the patent will issue to the children. Where the sale of land is desired for the benefit of minor heirs, application should be made to the Court having jurisdiction in probate matters, for an order of sale. The order of sale and the sale thereunder should be certified to the Register and Receiver under seal of the Court, whereupon Register's final certificate will be issued, after publication of notice for thirty days preceding date to be fixed by the Register and Receiver. Copy of such published notice must be posted in the land office during the period of publication. The following form may be used:

#### DEPARTMENT OF THE INTERIOR

##### United States Land Office

NOTICE IS HEREBY GIVEN that .....191..  
from ..... purchaser  
..... guardian of ..... minor heir of  
....., deceased, has made application for the issue  
of patent to him under Section 2292, U. S. Revised Statutes, for .....  
Sec. ...., T. .... of Range ..... M. P., containing .... acres,  
being the land embraced in H. E. Serial No. .... of the said .....  
deceased.

All persons having claims to the land adverse to the said .....  
and the said named minor heir may file protests against the issuance of said  
patent in my office, on or before the..... day of ....., 1912.

Register.

(Sec. 2292, Revised Statutes, p. 343.) Consult also decisions under both sections, as shown in Table of Revised Statutes Cited and Construed.

Upon the death of a homesteader who leaves no widow, but both adult and minor heirs, the right to perfect entry passes alike to all the heirs.

See *Bernier vs. Bernier*, 147 U. S., 242.

"The heirs of a deceased homestead entryman may delegate to another the power to perform for their benefit the cultivation on the entry required by law, and such cultivation, if actually carried on in good faith for the required period, constitutes compliance with the homestead law the same as though performed by the heirs themselves."

"The right conferred by law upon the heirs of a deceased homestead entryman to submit final proof on the entry can not be delegated to another."

"Where a homestead claimant, by contract to convey the land embraced in his entry after the submission of final proof, puts it beyond his power to acquire title under the entry except by perjury, he thereby forfeits his rights, and upon proof of such fact the entry will be canceled."



"A homestead entryman who at the time of his death had not acquired the legal title to the land embraced in his entry, was not at such time, by reason of his claim under the entry, a person 'holding real property,' within the meaning of article 1 of the treaty of March 1, 1899, between the United States and Great Britain, and his alien heirs, subjects of the latter country, have therefore no such claim or right to the lands embraced in the entry as is entitled to protection under the provisions of said treaty."

"There is no provision of the homestead law by which any rights or claims to public lands, prior to the issuance of patent, can be devised or succeeded to and perfected by, or on behalf of, other than citizens of the United States."

"The heirs of a deceased homestead entryman who during his lifetime failed to comply with the law, may complete the entry by either residing upon or cultivating the land for the full period of five years, if sufficient of the lifetime of the entry remains for that purpose; or may commute upon a showing of residence and cultivation for fourteen months, but can not commute upon a showing of cultivation alone." (See Three-Year Homestead Law.)

"Upon the death of a homesteader prior to consummation of his claim, his widow, if there be one, succeeds under the homestead law to his right to the land; and the State courts have no jurisdiction to interfere with or divert the succession so fixed by Federal statute."

#### **WATER RIGHTS.**

See Mining Claim.

See Sections 2339 and 2340 R. S.

Acquired by prior appropriation and protected under Sections 2339 and 2340. Title of water used for reclamation of desert land must be bona fide appropriation. 1 L. D., 27; 5 L. D., 191; 9 L. D., 6.

"An adverse claim as against an alleged prior appropriation will not be recognized if it appears that undisturbed possession has been maintained under such appropriation for a period sufficient to establish title." 9 L. D., 6.

"The Land Department has authority to determine questions pertaining to appropriation for the reclamation of desert land." 9 L. D., 6.

See Arid Lands.

See Desert Lands.

See Reclamation Land.

See Right of Way, canals, ditches, and reservoir sites.

"Final certificate of patent will not issue upon a desert land entry within a reclamation project until all the payments for water right under such entry have been made and the water right permanently attached to the land." 38 L. D., 194.

#### **ADJUDICATION OF WATER RIGHTS.**

Under date of April 16, 1912, the Commissioner of the General Land Office issued instructions to the land offices in Montana, and said:

"Hereafter, in taking or examining final proofs, you will, in every case where water appropriation, as alleged, was made on or after March 9, 1907, require the claimant, if there was, prior to the appropriation, an adjudication of the water rights in the stream involved, to furnish a duly certified copy of the order of court allowing claimant's appropriation. In every case of alleged appropriation on or after March 9, 1907, where copy of such order or decree is not filed, on the ground that no adjudication has been had, you will require claimant to furnish a certificate from the proper court, stating whether there has been such an adjudication."

While these instructions were intended to cover the water right situation in Montana, it is deemed proper to give them here that their applicability may be shown in States having a similar statutory provision concerning water appropriations.

See Reclamation Lands.  
See Desert Entries.

### WAGON ROADS.

"An executive order of withdrawal made in aid of a congressional grant, where there is no statutory prohibition against such action, rests upon the general authority of the department, and no rights, either legal or equitable, can be acquired by either settlement or equity, in violation of such order." 26 L. D., 357.

"Mere occupation or use of a body of unsurveyed public land of indefinite area without any intent to acquire title to the particular portion thereof in controversy, is not such an appropriation of that portion as to except it, or the subdivision of which it is a part, from the operation of a wagon road grant." Watson v. The Dalles Military Wagon Road Co., 24 L. D., 202.

See Military Roads.

See Land Grants, allowing entry of 160 acres on even sections, Act March 3, 1879, 20 Stats., 472.

Land Grants, limitations on suits to annul patents, Act of March 2, 1896, 29 Stats., 42.

Land Grants, Relief of Settlers on, Act of July 1, 1902, 32 Stats., 733.

See Post Roads, Act March 1, 1884, 23 Stats., 32 L. D., 620.

California & Oregon Land Co., 32 L. D., 154; 31 L. D., 424.

Eastern Oregon Land Co., 31 L. D., 174.

The grant to the State of Oregon by the Act of February 25, 1867, to aid in the construction of a military wagon road, was operative only on lands within the boundaries of that State, and lands outside the State, although within six miles of the road, generally constitute a valid basis for indemnity. 37 L. D., 694.

### WITNESSES.

See Rules of Practice, Depositions, Subpœnas.

Compulsory attendance, 32 L. D., 132; 39 L. D., 601.

Fees and mileage, 36 L. D., 473.

An Act providing for the compulsory attendance of witness before registers and receivers of the land office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That registers and receivers of the land office, or either of them, in all matters requiring a hearing before them, are authorized and empowered to issue subpoenas directing the attendance of witnesses, which subpoenas may be served by any person by delivering a true copy thereof to such witness, and when served witnesses shall be required to attend in obedience thereto: Provided, That if any subpoena be served under the provisions of this Act by any person other than an officer authorized by the laws of the United States, or of the State or Territory in which the depositions are taken, the service thereof shall be proved by the affidavit of the person serving the same: Provided further, That said subpoenas shall be served within the county in which attendance is required, and at least five days before attendance is required.

Sec. 2. That witnesses shall have the right to receive their fee for one day's attendance and mileage in advance. The fees and mileage of witnesses shall be the same as that provided by law in the district courts of the United States in the district in which such land offices are situated; and the witness shall be entitled to receive his fee for attendance in advance from day to day during the hearing.

Sec. 3. That any person wilfully neglecting or refusing obedience to such subpoena, or neglecting or refusing to appear and testify when subpoenaed, his fees having been paid if demanded, shall be deemed guilty of a misdemeanor, for which he shall be punished by indictment in the district court of the United States or in the district courts of the Territories exercising the jurisdiction of circuit or district courts of the United States. The punishment for such offense, upon conviction, shall be a fine of not more than two hundred dollars, or imprisonment not to exceed ninety days, or both, at the discretion of the court: Provided, That if such witness has been prevented from obeying such subpoena without fault upon his part he shall not be punished under the provisions of this act.

Sec. 4. That whenever the witness resides outside the county in which the hearing occurs, any party to the proceeding may take the testimony of



such witness in the county of such witness's residence in the form of depositions by giving ten days' written notice of the time and place of taking such depositions to the opposite party or parties. The depositions may be taken before any United States commissioner, notary public, judge, or clerk of a court of record. Subpoenas for witnesses before the officer taking depositions may issue from the office of the register or receiver, or may be issued by the officer taking the depositions, and disobedience thereof, as defined in this Act, shall also be punished; and the witness shall receive the same fees and mileage and be subject to the same penalties in all respects as in case of violation of a subpoena to appear before the register or receiver, and subject to the same limitations. The fees of the officer taking the depositions shall be the same as those allowed in the State or Territorial courts, and shall be paid by the party taking the deposition, and an itemized account of the fees shall be made by the officer taking the depositions and attached to the depositions.

Sec. 5. That whenever the taking of any depositions taken in pursuance of the foregoing provisions of this Act is concluded the opposite party may proceed at once at his own expense to take depositions in his own behalf, at the same time and place and before the same officer: Provided, That he shall, before taking of the depositions in the first instance is entered upon, give notice to the opposing party, or any agent or attorney representing him in the taking of said depositions, of his intention to do so.

Approved, January 31, 1903 (32 Stat., 790).

### WORDS AND PHRASES.

- "Conspicuous Place" (Hughes et al. v. Gilbert et al., 2 L. D., 756).
- "Children" (W. S. Jackson, 2 L. D., 611).
- "As soon as practicable" (William Rablin, 2 L. D., 764).
- "Jumping" of Claims, "Jumped" (Circular September 29, 1893, 2 L. D., 337).
- "Actual Settler" (Samuel M. Frank, 2 L. D., 628).
- "Sales of Public Lands" (State of Kansas, 2 L. D., 695).
- "After," "Before," "All right and title," "Bona Fide Purchaser" (Charlemagne Tower, 2 L. D., 779).
- "Person," "Corporation," "Entry" (North and South Alabama Rd. Co., 2 L. D., 681).
- "Disposal," "Entry" (Arant v. State of Oregon, 2 L. D., 641).
- "Half," "and," "or" (Indian Allotments, Act February 8, 1887, Instruction, 5 L. D., 521).
- "Homestead Laws" (Kelly v. Maynard, 5 L. D., 591).
- "All lands not locally inapplicable shall have the same force and effect within that State as in the other States of the Union" (State of Kansas v. U. S., 5 L. D., 712).
- "Reasonably" (Pearsall & Freeman, 6 L. D., 227).
- "Shall be disposed of to actual settlers under the Homestead Law" (Indian Allotments Old Columbia Reservation Act of July 4, 1884, and February 8, 1887, Circular July 22, 1887, 43).
- "Confirmed by Congress" (Jean Pierre Clothier, 6 L. D., 447).
- "Public Lands," "Another" (Falconer v. Hunt et al., 6 L. D., 512).
- "Actual and Bonafide," "The Secretary of the Interior shall make all rules and regulations necessary to carry into effect the provisions of this Act" (Chitwood v. Hickok, 7 L. D., 277).
- "Adjacent to line of railroad" (Oregon and Washington Ty. Rd. Co., 7 L. D., 541).
- "Show," also "One or more of the witnesses is absent without the consent or procurement"; "The exercise of proper diligence to procure the attendance of the absent witnesses" (Smith v. Smart, 7 L. D., 63).
- "Actual Settler" (U. S. et al. v. Atterbery et al., 8 L. D., 173).
- "Bonafide Residence" (J. H. Thompson, 10 L. D., 34).
- "Had the benefit of said law" (Jas. W. Berry, 10 L. D., 634).
- "Public Lands" (Frank Burns, 10 L. D., 365).
- "Day," "Business day" (15 L. D., 302).
- "Bonafide," "Actual settlers in good faith" (Rene v. Prendergast, 17 L. D., 385).
- "Actual Settlers in Good Faith" and also "possession," also "Bonafide intent to secure title to the land by purchase from the State or corporation when earned." Also "Actually residing," also the phrase "May have settled said land" (Pawnee Indian Lands, Instructions October 23, 1893, 17 L. D., 490).

- "Land District" (18 L. D., 601).  
 "Citizens" (19 L. D., 141).  
 "Head of a family" (Nix v. Simon, 19 L. D., 85).  
 "Civil Death" (Nix v. Simon, 19 L. D., 85).  
 "Reserved from sale by any law of Congress" (Campbell v. Jackson, 19 L. D., 277).  
 "Enter"; "Three years after filing said declaration," "Declaration" (Fred W. Kimball, 20 L. D., 67).  
 "Casualty" (John Reilly, 20 L. D., 21).  
 "Enter"; "Homestead Laws" (Quinn v. Taby, 20 L. D., 528).  
 "Fee simple title"; also "But a limited and conditional title only" (Perry v. Krotz, 21 L. D., 503).  
 "Could not be heard to charge his landlord with abandonment of the land"; "That is all right, let the Government settle it," "Bonafide" (Marsh v. Huges, 22 L. D., 581).  
 "Adverse Claim"; and also "valid" (Jared Martin et al., 23 L. D., 582).  
 "Public lands adjacent thereto" (24 L. D., 588).  
 "Subject to entry by the first legal applicant" (Hastings & N. D. Rd. Co. v. Arnold, 26 L. D., 538).  
 "Occupant" and also "Use and Possession" (Frank Johnson, 28 L. D., 537).  
 "Bonafide Settlers" (29 L. D., 501).  
 "By their legal subdivisions of 40 acres" (29 L. D., 501). Instruction, February 15, 1900.  
 "Lost or otherwise" (John W. Spain, 21 L. D., 362).  
 "Permits for Right of Pasturage" (Territory New Mexico, 34 L. D., 143).  
 "In a nature of an easement"; "list" (34 L. D., 288).  
 "Compact"; also "Shall as nearly compact in form as possible, and in no event over two miles in extreme length" (Ralph Wertz et al., 35 L. D., 585).  
 "Own and occupy" (Libolt v. Snider, 35 L. D., 430).  
 "Public Land Laws" (Edwin J. Miller, 35 L. D., 411).  
 "A preference right of entry"; also "Under the preceding section"; "The right to enter by legal subdivision"; also "Upon payment to the Receiver"; "Exclusive" (Charles S. Morrison, 36 L. D., 127).  
 "Foreigner"; "Alien" (36 L. D., 195).  
 "Public Lands" (36 L. D., 345).  
 "Entry" (36 L. D., 279).  
 "Actual Settlers" (State of Oregon, 36 L. D., 509).  
 "Lawful Filing" (State of Washington, 37 L. D., 2).  
 "Extraordinary emergency" (37 L. D., 32) (Opinion).  
 "Gravel" (Zimmerman v. Brunson, 38 L. D., 313).  
 "Agricultural Lands" (Northern Pacific Ry. Co., 38 L. D., 314).  
 "Own and Occupy" (Kincaid Act) (Dibolt v. Coen, 38 L. D., 16).  
 "Permanent Forest Reserve" (Act June 11, 1906 (Opinion), 38 L. D., 411).  
 "Temporary Forest Reserve" (Act June 11, 1906 (Opinion), 38 L. D., 414).  
 "Resident" (Act June 3, 1878, Centerville Mining & Milling Co., 38 L. D., 80).  
 "Actual Residence" (Act of August 15, 1894, Adams v. Coates, 39 L. D., 179).  
 "Citizen," "Person" (Act of March 3, 1887, 39 L. D., 245).  
 "Claimant" (39 L. D., 31).  
 "Honorably discharged," within meaning of Section 2304 R. S. (39 L. D., 164).  
 "Legal Representation"; "Mortgagee," within meaning of Act of March 26, 1908 (Alexander Fraser, 39 L. D., 151).  
 "Person" in the Act of March 3, 1909, includes "State," "Selection" (State of Mont., 39 L. D., 247).  
 "Proprietor" within the meaning of Section 2289, Revised Statutes (Gallant v. Cole, 39 L. D., 153); (Reiber v. Stauffacher, 39 L. D., 201).

#### SETTLERS ON RESTORED RAILROAD LANDS.

An Act for the relief of certain settlers on restored railroad lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons who shall have settled and made valuable and permanent improvements upon any odd-numbered section of land within any railroad withdrawal in good faith and with the permission and license of the railroad company, for whose benefit the same



shall have been made, and with the expectation of purchasing of such company the land so settled upon, which land so settled upon and improved may, for any cause, be restored to the public domain, and who, at the time of such restoration, may not be entitled to enter and acquire title to such land under the preemption, homestead or timber culture acts of the United States, shall be permitted at any time within three months after such restoration, and under such rules and regulations as the Commissioner of the General Land Office may prescribe to purchase, not to exceed one hundred and sixty acres in extent of the same legal subdivisions, at the price of two dollars and fifty cents an acre, and to receive patents therefor.

Approved, January 13, 1881 (21 Stat., 315).

### CLIMATIC HINDRANCES.

An Act to amend Section 2297 of the Revised Statutes, relating to homestead settlers.

See Three-year homestead law as amended Act June 6, 1912, p. 480.

### REIMBURSEMENT FOR FAILURE OF TITLE IN NEBRASKA AND KANSAS.

An Act for the relief of settlers and purchasers of lands on the public domain in the States of Nebraska and Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of reimbursing persons, and the grantees, heirs and devisees of persons, who under the homestead, preemption, or other laws, settled upon or purchased lands within the grant made by an Act entitled "An Act for a grant of lands to the State of Kansas to aid in the construction of the Northern Kansas Railroad and Telegraph," approved July twenty-third, eighteen hundred and sixty-six, and to whom patents have been issued therefor, but against which, persons, or their grantees, heirs or devisees, decrees have been or may hereafter be rendered by the United States circuit courts on account of the priority of said grant made in the Act above entitled, the sum of two hundred and fifty thousand dollars, or so much thereof as shall be required for said purpose, is hereby appropriated: Provided, however, That no part of said sum shall be paid to any one of said parties until after he shall have filed with the Secretary of the Interior a copy of the said decree, duly certified, and also a certificate of the judge of said court rendering the same to the effect that such a decree was rendered in a bona fide controversy between a plaintiff showing title under the grant made in said Act, and defendant holding the patent or holding by deed under the patentee, and that the decision was in favor of the plaintiff on the ground of the priority of the grant made by said Act to the filing, settlement or purchase by the defendant or his grantor; and said claimant shall also file with the said decree and certificate a bill of the costs in such case, duly certified by the judge and clerk in said court. Thereupon it shall be the duty of the Secretary of the Interior to adjust the amount due to each defendant on the basis of what he shall have paid, not exceeding three dollars and fifty cents per acre for the tract, his title to which shall have failed as aforesaid, and the costs appearing by the bill thereof so certified as hereinbefore provided. He shall then make a requisition upon the Treasury for the sum found to be due to such claimant, or his heirs, and devisees or assigns, and shall pay the same to him, taking such release, acquittance or discharge as shall forever bar any claim against the United States on account of the failure of the title as aforesaid: Provided further, That when any person, his grantees, heirs, assigns or devisees, shall prove to the satisfaction of the Secretary of the Interior that his case is like the case of those described in the preceding portions of this Act, except that he has not been sued and subjected to judgment as hereinbefore provided, and that he has in good faith paid to the person holding the prior title by the grant herein referred to the price demanded of him, without litigation, such Secretary shall pay to such person such sum as he has so paid, not exceeding three dollars and fifty cents per acre, taking his release therefor as hereinbefore provided.

Sec. 2. That the provisions of this Act shall only apply to the actual and bona fide settlers on the lands herein referred to, his or their heirs, assigns, or legal representatives, and no one person shall be entitled to the benefits of this Act for compensation for more than one hundred and sixty acres of land: Provided, That all other persons who purchased any part of said land at one

dollar and twenty-five cents per acre, and the money was actually paid into the Treasury, such person, his heirs, assigns, or legal representatives, shall be entitled to repayment of the money so actually paid by them.

Approved, March 3, 1887. (24 Stat., 550.)

### ADJUSTMENT OF RAILROAD LAND GRANTS.

An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and the forfeiture of unearned lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the Railroad Land Grants made by Congress to aid in the construction of railroads and heretofore adjusted.

Sec. 2. That if it shall appear, upon the completion of such adjustments respectfully (respectively), or sooner, that lands have been from any cause heretofore erroneously certified or patented by the United States to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits, and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

Sec. 3. That if in the adjustment of said grants, it shall appear that the homestead or preemption entry of any bona fide settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: Provided, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: And provided also, That he did not voluntarily abandon said original entry. And provided further, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon.

Sec. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the lands so purchased, upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior on behalf of the United States shall demand payment of the company which has so disposed of such lands of an amount equal to the Government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suit or suits to be brought against such company for the said amount: Provided, That nothing in this Act shall prevent any purchaser of lands erroneously withdrawn, certified or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States by such company as by this Act required: And provided, That a mortgage or pledge of such lands by the company shall not be considered as a sale for the purpose of this Act, nor shall this Act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the



same, or as a waiver of any rights that the United States may have on account of any breach of said conditions.

Sec. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention of becoming such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections, prescribed in the grant, and being coterminous with the constructed parts of said road and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: Provided, That all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the preemption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said preemption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: Provided further, That this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

Sec. 6. That where any such lands have been sold and conveyed, as the property of any railroad company, for the State and county taxes thereon, and the grant to such company has been thereafter forfeited, the purchaser thereof shall have the prior right, which shall continue for one year from the approval of this Act, and no longer, to purchase such lands from the United States at the Government price, and patents for such lands shall thereupon issue: Provided, That said lands were not, previous to or at the time of the taking effect of such grant, in the possession of or subject to the right of any actual settler.

Sec. 7. That no more lands shall be certified or conveyed to any State or to any Corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which said State, Corporation or individual would be rightfully entitled.

Approved, March 3, 1887 (24 Stat., 556).

Note—See Regulations June 15, 1901, 30 L. D., 620, also circular February 14, 1899, Act July 1, 1898, page 170.

## **ENTRIES FOR BUILDING STONE—EXTENSION OF ACT OF JUNE 3, 1878.**

An Act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims: Provided, That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this Act.

Sec. 2. That an Act entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory" approved June third, eighteen hundred and seventy-eight, be, and the same is hereby, amended by striking out the words "States of California, Oregon, Nevada, and Washington Territory" where the same occur in the second and third lines of said Act, and insert in lieu thereof the words "Public-land States," the purpose of this Act being to make said Act of June third, eighteen hundred and seventy-eight, applicable to all the public-land States.

Sec. 3. That nothing in this Act shall be construed to repeal section twenty-four of the Act entitled "An Act to repeal timber-culture laws and for other purposes," approved March third, eighteen hundred and ninety-one.

Approved, August 4, 1892. (27 Stat., 348.)

## SURVEY OF PUBLIC LANDS AT REQUEST OF PERSONS OR ASSOCIATIONS OF PERSONS—SPECIAL DEPOSITS THEREFOR.

An Act to amend sections twenty-four hundred and one and twenty-four hundred and three of the Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-four hundred and one of the Revised Statutes of the United States is hereby amended so as to read as follows:

"Sec. 2401. When the settlers in any township, not mineral or reserved by the Government, or persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof, or when the owners or grantees of public lands of the United States, under any law thereof, desire a survey made of the same under the authority of the Surveyor-General and shall file an application therefor in writing, and shall deposit in a proper United States depository to the credit of the United States a sum sufficient to pay for such survey, together with all expenditures incident thereto, without cost or claim for indemnity on the United States, it shall be lawful for the Surveyor-General, under such instructions as may be given him by the Commissioner of the General Land Office, and in accordance with law to survey such township or such public lands owned by said grantees of the Government and make return therefor to the general and proper local land office: Provided, That no application shall be granted unless the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or basis for township and sub-divisional surveys.

Sec. 2. That section twenty-four hundred and three of the Revised Statutes of the United States as heretofore amended is hereby amended so as to read as follows:

"Sec. 2403. Where settlers or owners or grantees of public lands make deposits in accordance with the provisions of section twenty-four hundred and one, as hereby amended, certificates shall be issued for such deposits which may be used by settlers in part payment for the lands settled upon by them, the survey of which is paid for out of such deposits, or said certificates may be assigned by indorsement and may be received by the Government in payment for any public lands of the United States in the States where the surveys were made, entered or to be entered under the laws thereof."

Sec. 3. That all laws and parts of laws inconsistent with this Act be, and the same are hereby, repealed.

Received by the President, August 8, 1894.

(Note by the Department of State.—The foregoing Act having been presented to the President of the United States for his approval and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.)

August 20, 1894. (28 Stat., 423.)

## REVISED STATUTES OF THE UNITED STATES.

### The Secretary of the Interior.

Duties of Secretary.—3 Mar., 1849, C. 108, ss. 3, 5, 6, 7, 8, 9, v. 9, p. 395. 8 July 1870, c. 230, s. 1, v. 16, p. 198. 5 Feb. 1859, c. 22, s. 1, v. 11, p. 379. 20 July, 1868, c. 176, s. 1, v. 15, pp. 92, 106. *Maguire v. Tyler*, 1 Bl., 95.

Sec. 441. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

First. The Census; when directed by law.

Second. The public lands, including mines.

Third. The Indians.

Fourth. Pensions and bounty lands.

Fifth. Patents for inventions.

Sixth. The custody and distribution of publications.

Seventh. Education.

Eighth. Government Hospital for the Insane.

Ninth. Columbia Asylum for the Deaf and Dumb.

### Commissioner of the General Land Office.

Duties of Commissioner.—25 Apr., 1812. c. 68 s. 1, v. 2. p. 716. 4 July, 1836, c. 352, s. 1, v. 5. p. 107.



Sec. 453. The Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands, of the United States, or in any wise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all Agents (grants) of land under the authority of the Government.

#### **Exemplifications of Patents, Records, Books or Papers.**

Sec. 461 of the Revised Statutes was amended by the Act of April 2, 1888 (25 Stat., 76), to read as follows:

"Sec. 461. All exemplifications of patents or papers on file or of record in the General Land Office which may be required by parties interested shall be furnished by the Commissioner upon the payment by such parties at the rate of fifteen cents per hundred words, and thirty cents each for photolithographed copies of township plats or diagrams, unverified, not to exceed ten copies to any one person, and twenty-five cents each for all copies in excess of ten, with an additional sum of one dollar for the Commissioner's certificate of verification, with the General Land Office seal; and one of the employees of the office shall be designated by the Commissioner as the Receiving Clerk, and the amount so received shall, under the direction of the Commissioner, be paid into the Treasury; but fees shall not be demanded for such authentic copies as may be required by the officers of any branch of the Government, nor for such unverified copies as the Commissioner, in his discretion, may deem proper to furnish."

Sec. 891. Copies of any records, books or papers in the General Land Office, authenticated by the seal and certified by the Commissioner thereof or, when his office is vacant, by the principal clerk, shall be evidence equally with the original thereof. And literal exemplifications of any such records shall be held, when so introduced in evidence, to be of the same validity as if the names of the officers signing and countersigning the same had been fully inserted in such record.

(See Secs. 461, 2469 and 2470.)

#### **New Orleans Pacific Railway Company May Relinquish Lands in Favor of Settlers, and Make Selections in Lieu Thereof.**

Chap. 98.—An Act for the relief of settlers upon lands within the indemnity limits of the grant to the New Orleans Pacific Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That authority be, and is hereby, given the New Orleans Pacific Railroad to relinquish any lands within the indemnity limits of its grant, which by decision of the Land Department of the Government has been awarded it, in favor of any settler entitled to the right of entry under the laws of the United States who has been allowed to make entry thereof, or who has resided upon and improved the same for five years, and to select in lieu thereof an equal quantity of other lands, from any of the public lands not mineral, and within the limits of its grant and not otherwise apportioned at the date of selection, to which it shall receive title the same as though originally granted.

Approved, April 14, 1896. (29 Stat., 91.)

#### **Confirmation of Certain Homestead Entries, Prematurely Commuted, etc.**

Chap. 312.—An Act relating to commutations of homestead entries, and to confirm such entries when commutation proofs were received by local land officers prematurely.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever it shall appear to the Commissioner of the General Land Office that an error has heretofore been made by the officers of any local land office in receiving premature commutation proofs under the homestead laws, and that there was no fraud practiced by the entryman in making such proofs, and final payment has been made and a final certificate of entry has been issued to the entryman and that there are no adverse claimants to the land described in the certificates of entry whose rights originated prior to making such final proofs, and that no other reason why the title should not vest in the entryman exists except that the commutation was made less than fourteen months from the date of the

homestead settlement, and that there was at least six months' actual residence in good faith by the homestead entryman on the land prior to such commutation, such certificates of entry shall be in all things confirmed to the entryman, his heirs and legal representatives, as of the date of such final certificate of entry, and a patent issued thereon, and the title so patented shall inure to the benefit of any grantee or transferee in good faith of such entryman subsequent to the date of such final certificate: Provided, That this Act shall not apply to commutation and homestead entries on which final certificates have been issued, and which have heretofore been canceled when the lands made vacant by such cancellation have been reentered under the homestead Act.

Sec. 2. That all commutations of homestead entries shall be allowed after the expiration of fourteen months from date of settlement.

Sec. 3. That all Acts and parts of Acts in conflict with any of the provisions of this Act are hereby repealed.

Sec. 4. That this Act shall take effect and be in force from and after its passage and approval.

Approved June 3, 1896. (29, Stat., 197.)

#### Confirmations by the Seventh Section of the Act of March 3, 1891.

The seventh section of the Act entitled "An Act to repeal timber-culture laws, and for other purposes," approved March 3, 1891 (26 Stat. L., 1095), reads as follows, viz:

"That whenever it shall appear to the Commissioner of the General Land Office that a clerical error has been committed in the entry of the public lands such entry may be suspended upon proper notification to the claimant through the local land office until the error has been corrected; and all entries made under the preemption, homestead, desert-land, or timber-culture laws, in which final proof and payment may have been made and certificates issued, and to which there are no adverse claims originating prior to final entry and which have been sold or incumbered prior to the first day of March, eighteen hundred and eighty-eight, and after final entry of bona fide purchasers, or incumbrancers, for a valuable consideration, shall, unless upon an investigation by a Government agent, fraud on the part of the purchaser has been found, be confirmed and patented upon presentation of satisfactory proof to the land department of such sale or incumbrance: Provided, That after the lapse of two years from the date of the issuance of the Receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture desert-land, or preemption laws, or under this Act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him; but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor.

Under this section, whenever a clerical error is discovered in any entry of the public lands which can not be accurately corrected by reference to the files, plats, and records of the General Land Office, such entry will be suspended upon notice to the claimant, and so remain until such error shall have been corrected.

The first class of entries confirmed by this section are those heretofore made, and with the additional conditions that there was a sale or incumbrance of the land prior to March 1, 1888, and after the issuance of final certificate to bona fide purchasers or incumbrancers, and that there is no adverse claim originating prior to final entry.

As to this class of entries it must be shown that no adverse claim exists that originated prior to final entry, and this will be usually determined by the records of the local and General Land Offices. The sale or incumbrance must be shown and all conveyances necessary to connect the present claimant of the land with the original entryman, by means of the original deeds, certified copies thereof, or a duly certified abstract of the proper records, together with satisfactory evidence that the incumbrance has not been discharged or that the land has not been reconveyed to the entryman. The bona fides of the sale or incumbrance must appear to the satisfaction of the officers of the Government.

The proviso to said section affects not only entries made prior to the passage of said Act, but also those made and to be made subsequently thereto, and, as to this latter class, may be said to be a statute of limitations. All entries against which contests or protests by individuals were pending



at the date of the passage of said Act are held to have been excepted from the confirmatory provisions of this proviso, and such contests and protests will be considered and disposed of as if same section had not been passed. Where the period of two years from the date of the Receiver's receipt expires after the passage of said Act a contest or protest to be effective to prevent the confirmation of such entry must have been initiated within such period.

As to the effect of the proviso of this section upon proceedings instituted by the Government it is sufficient for the purposes of this circular to say that such proceedings as have been or shall be begun within two years from the date of the Receiver's receipt on final entry are not affected by said proviso, but will be continued to a final determination of the questions involved, and that such proceedings to be effective to take the entry attacked out of the operation of said proviso must have been begun within the said period.

It is not thought proper in this circular to enter into details or attempt to lay down rules to govern all questions that may arise in the administration of this section, and for such information reference may be had to the decisions of the Department.

An Act to amend section four of an Act entitled "An Act to prevent unlawful occupancy of the public lands," approved February twenty-fifth, eighteen hundred and eighty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of an Act entitled "An Act to prevent unlawful occupancy of the public lands," approved February twenty-fifth, eighteen hundred and eighty-five, be, and the same is hereby, amended so as to read as follows:

"Sec. 4. That any person violating any of the provisions hereof, whether as owner, part owner, or agent, or who shall aid, abet, counsel, advise, or assist in any violation hereof, shall be deemed guilty of a misdemeanor and fined in a sum not exceeding one thousand dollars, or to be imprisoned not exceeding one year, or both, for each offense."

Approved, March 10, 1908.

60 Congress, Public No. 45, page 40.

An Act to declare and enforce the forfeiture provided by section four of the Act of Congress approved March third, eighteen hundred and seventy-five, entitled "An Act granting to railroads the right of way through the public lands of the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each and every grant of right of way and station grounds heretofore made to any railroad corporation under the Act of Congress approved March third, eighteen hundred and seventy-five, entitled "An Act granting to railroads the right of way through the public lands of the United States," where such railroad has not been constructed and the period of five years next following the location of said road, or any section thereof, has now expired, shall be, and hereby is, declared forfeited to the United States, to the extent of any portion of such located line now remaining unconstructed, and the United States hereby resumes the full title to the lands covered thereby free and discharged from such easement, and the forfeiture hereby declared shall, without need of further assurance or conveyance, inure to the benefit of any owner or owners of land heretofore conveyed by the United States subject to any such grant of right of way or station grounds: Provided, That no right of way on which construction is progressing in good faith at the time of the passage of this Act shall be in any wise affected, validated or invalidated, by the provisions of this Act.

Approved, February 25, 1909.

Second Session of the Sixtieth Congress, 1908-1909.

Chap. 191, page 647.

An Act to validate certain entries of public lands in the State of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no entries or filings for lands in township five and one-half south, of ranges forty-two, forty-three, forty-four, forty-five, and forty-six west, in the State of Colorado, shall be canceled or held invalid because they were not allowed, made, or perfected in the proper land district.

Approved, March 26, 1908.

Public No. 65.

60 Congress, Chap. 101. 1907-1908.

## CROW LAND.

The Act of April 27, 1904, among other things, provides:

Sec. 2. That the said agreement be, and the same is hereby, accepted, ratified, and confirmed, as herein amended.

Sec. 3. That for the purpose of surveying and marking so much of the boundary line of the tract ceded and relinquished by the Indians as may be necessary to segregate the same from the lands reserved by them, as provided in article four of said agreement, the sum of one thousand two hundred dollars, or so much thereof as may be necessary, be and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, and there is hereby appropriated, out of any money in the treasury not otherwise appropriated, the sum of forty thousand dollars, or so much thereof as may be necessary, for the completion of the survey and subdivision of said ceded lands, the same to be reimbursed out of the first moneys to be received from the sale of said lands.

Sec. 4. That the Commissioner of Indian Affairs shall cause allotments to be made, in manner and quantity as provided by existing law, of the lands occupied and cultivated by any Indians on the portion of the reservation by said agreement ceded and relinquished, as required by article three thereof; and where such Indian occupants elect to remove to the diminished reservation he shall cause a schedule to be prepared showing the names of such occupants, the descriptions of the lands, and the character of the improvements thereon. Such improvements shall then be appraised and sold under the direction of the Secretary of the Interior to the highest bidder, no sale to be for less than the appraised value, the proceeds to be paid to the respective Indian occupants as required by said article 3: Provided, That the purchaser of such improvements shall have a preference right, if otherwise qualified, of thirty days after the land becomes subject to entry within which to enter the lands upon which the improvements are located, not exceeding one hundred and sixty acres, in compliance with the provisions herein governing the disposition of said ceded lands.

The Secretary of the Interior shall fix a reasonable time within which such Indian occupants shall elect whether they will remain on the ceded tract or remove to the diminished reservation, and where they elect to remove he shall also fix a reasonable time within which such occupants must remove their improvements if they should chose to do so instead of having the same appraised and sold.

Sec. 5. That before any of the lands by this agreement ceded are opened to settlement or entry the Commissioner of Indian Affairs shall cause the allotments to be made and the schedule to be prepared, as provided for in section four of this Act, and a duplicate of said schedule shall be filed with the Commissioner of the General Land Office. Upon the completion of such allotments and the filing of such schedule and after the sale or removal of such improvements, the residue of such ceded lands, except sections sixteen and thirty-six, or lands in lieu thereof, which shall be reserved for common school purposes, and are hereby granted to the State of Montana for such purpose, shall be subject to withdraw and disposition under the Reclamation Act of June seven-teenth, nineteen hundred and two, so far as feasible irrigation projects may be found therein. The charges provided for by said Reclamation Act shall be in addition to the charge of four dollars per acre for the land, and shall be paid in annual instalments as required under the Reclamation Act; and the amounts to be paid for the land shall be credited to the funds herein established for the benefit of the Crow Indians. If any lands in sections sixteen and thirty-six are included in an irrigation project under the Reclamation Act, the State of Montana may select in lieu thereof, as herein provided, other lands not included in any such project, in accordance with the provisions of existing law concerning school land selections. In any construction work upon the ceded lands performed directly by the United States under the Reclamation Act, preference shall be given to the employment of Crow Indians, or whites inter-married with them, so far as may be practicable: Provided, however, That if the lands withdrawn under the Reclamation Act are not disposed of within five years after the passage of this Act, then all of said lands so withdrawn shall be disposed of as other lands provided for in this Act. That the lands not withdrawn for irrigation under said Reclamation Act, which lands shall be determined under the direction of the Secretary of the Interior at the earliest practical date, shall be disposed of under the homestead, townsite,



and mineral land laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: Provided, That as to the lands opened under such proclamation the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish war or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged: And provided further, That the price of said lands shall be four dollars per acre, when entered under the homestead laws, to be paid as follows:

One dollar per acre when entry is made, and the remainder in four equal annual installments, the first to be paid at the end of the second year.

In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre.

Lands entered under the townsite and mineral land laws shall be paid for in amount and manner as provided by said laws, but in no event at a less price than that fixed herein for such lands, if entered under the homestead laws, and in case any entryman fails to make such deferred payments, or any of them, promptly when due, all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be held for cancellation and cancelled: Provided, That the lands embraced within such cancelled entry shall, after cancellation of such entry, be subject to entry under the provisions of the homestead law at four dollars per acre until otherwise directed by the President, as herein provided: And provided, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein; receiving credit for payments previously made, except as to lands entered under said Reclamation Act: And provided further, That when, in the judgment of the President, no more of the land herein ceded can be disposed of at said price, he may by proclamation, to be repeated at his discretion, sell from time to time the remaining land subject to the provisions of the homestead law or otherwise as he may deem most advantageous, at such price or prices, in such manner, upon such conditions, with such restrictions, and upon such terms as he may deem best for all the interests concerned.

Sec. 6. That the proceeds received from the sale of said lands in conformity with this Act shall be paid into the Treasury of the United States, and paid to the Crow Indians or expended on their account only as provided in article two of said agreement as herein amended.

No lands in sections sixteen and thirty-six now occupied, as set forth in article three of the agreement herein ratified, or withdrawn for irrigation under the provisions of said Reclamation Act, shall be reserved for school purposes, but the State of Montana shall be entitled to indemnity for any lands so occupied; and the Governor of said State, with the approval of the Secretary of the Interior, is hereby authorized in the tract herein ceded to locate other lands not occupied or withdrawn, which shall be paid for by the United States, as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement, but no selections shall be made by the State of the lands herein ceded except to compensate for losses occurring therein.

Sec. 7. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of ninety thousand dollars, or so much thereof as may be necessary, to pay the said Indians, at the rate of one dollar and twenty-five cents per acre, for the lands granted to the State of Montana, as provided in section five of this Act.

Sec. 8. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and

to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

Approved, April 27, 1904.

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 ✓ State of California v. Smith (5 L. D., 543); overruled, 18 L. D., 343.  
 State of Florida (17 L. D., 355); reversed, 19 L. D., 76.  
 State of Colorado (7 L. D., 490); overruled, 9 L. D., 408.  
 State of Louisiana (8 L. D., 126); modified, 9 L. D., 157.  
 State of Louisiana (24 L. D., 231); vacated, 26 L. D., 5.  
 ✓ State of Nebraska (18 L. D., 124) overruled, 28 L. D., 358.  
 State of Nebraska v. Dorrington (2 C. L. L., 647); overruled, 26 L. D., 122.  
 Stewart et al. v. Rees et al. (21 L. D., 446) overruled, 29 L. D., 401.  
 \* St. Paul, Minneapolis & Manitoba Ry. Co. (8 L. D., 255); modified, 13 L. D., 354; (see 32 L. D., 21).  
 St. Paul M. & M. Ry. Co. v. Hagen (20 L. D., 249); overruled, 25 L. D., 86.  
 St. Paul M. & M. Ry. Co. v. Fogelberg (29 L. D., 291); vacated, 30 L. D., 191.  
 ✓ Stricker, Lizzie (15 L. D., 74); overruled, 18 L. D., 283.  
 Sweeney v. Northern Pacific R. R. Co. (20 L. D., 394); overruled, 28 L. D., 174.  
 Sweeten v. Stevenson (3 L. D., 249); overruled, 3 L. D., 248.



- Taft v. Chapin (14 L. D., 593); overruled, 17 L. D., 414.  
 Talkington's Heirs v. Hempfling (2 L. D., 46); overruled, 14 L. D., 200.  
 Tate, Sarah J. (10 L. D., 469); overruled, 21 L. D., 211.  
 Taylor v. Yeats et al (8 L. D., 279); reversed, 10 L. D., 242.  
 \* Teller, John C. (26 L. D., 484); overruled, 36 L. D., 36; (see 37 L. D., 715).  
 Traugh v. Ernst (2 L. D., 212); overruled, 3 L. D., 98.  
 Tripp v. Stewart (7 C. L. O., 39); modified, 6 L. D., 795.  
 \* Tripp et al. v. Dunphy (28 L. D., 14); overruled, 40 L. D., 128.  
 Tucker v. Florida Ry. & Nav. Co. (19 L. D., 414); overruled, 25 L. D., 233.  
 Tupper v. Schwartz (2 L. D., 623); overruled, 6 L. D., 623.  
 Turner & Lang (1 C. L. O., 51); modified, 5 L. D., 256.  
 Turner v. Cartwright (17 L. D., 414); modified, 21 L. D., 40.  
 Tyler, Charles (26 L. D., 699); overruled, 35 L. D., 411.  
 Ulin v. Colby (24 L. D., 311); overruled, 35 L. D., 549.  
 Union Pacific R. R. Co. (33 L. D., 89); recalled, 33 L. D., 528.  
 ✓ United States v. Bush (13 L. D., 529); overruled, 18 L. D., 441.  
 United States v. Dana (18 L. D., 161); modified, 28 L. D., 45.  
 ✓ Vine, James (14 L. D., 535); modified, 14 L. D., 662.  
 Vradenbarg's Heirs et al. v. Orr et al. (25 L. D., 323); overruled, L. D., 253.  
 Walker v. Brosser (17 L. D., 85); reversed, 18 L. D., 425.  
 Walker v. Southern Pacific R. R. Co. (24 L. D., 172); overruled, 28 L. D., 174.  
 ✓ Walters, David (15 L. D., 136); revoked, 24 L. D., 58.  
 Wasmund v. Northern Pacific R. R. Co. (23 L. D., 445); vacated, 29 L. D., 224.  
 Waterhouse, William W. (9 L. D., 131); overruled, 18 L. D., 586.  
 Watson, Thomas E. (4 L. D., 169); modified, 6 L. D., 71.  
 Weber, Peter (7 L. D., 476); overruled, 9 L. D., 150.  
 Warden v. Schlecht (20 L. D., 523); overruled, 24 L. D., 45.  
 Wheaton v. Wallace (24 L. D., 100); modified, 34 L. D., 383.  
 Wickstrom v. Calkins (20 L. D., 459); modified, 21 L. D., 553; overruled, 22 L. D., 392.  
 Widow of Emanuel Prue (6 L. D., 436); vacated, 33 L. D., 409.  
 Wiley, George P. (36 L. D., 305); modified, 36 L. D., 417.  
 Wilkins, Benjamin C. (2 L. D., 129); modified, 6 L. D., 797.  
 Willamette Valley & Cascade Mountain Wagon Road Co. v. Bruner (22 L. D., 654); vacated, 26 L. D., 357.  
 Willamette Valley & Cascade Mountain Wagon Road Co. v. Chapman (13 L. D., 61); overruled, 20 L. D., 259.  
 Willingbeck, Christian P. (3 L. D., 383); modified, 5 L. D., 409.  
 Willis, Eliza (22 L. D., 426); overruled, 26 L. D., 436.

## REGULATIONS GOVERNING USE OF VACANT CEDED INDIAN LANDS.

To Officers in Charge of Indian Reservations and Registers and  
Receivers of United States Land Offices.

Department of the Interior,  
Washington, D. C., July 25, 1902.

Gentlemen: Regarding the question of jurisdiction over Indian lands after they have been opened for settlement and entry, under date of November 27, 1911, the First Assistant Secretary of the Interior addressed the Commissioner of Indian Affairs as follows:

### JURISDICTION OVER RELINQUISHED INDIAN LANDS.

November 27, 1911.

The Commissioner of Indian Affairs.

Sir: You have submitted the question of jurisdiction over lands within Indian reservations after they have been opened to settlement and entry.

The question is perhaps not one so much of jurisdiction as one involving the rights of the Indians to the use and benefit of the lands after provision has been made extinguishing the Indian claim and making disposition of the lands. You note that such lands may be divided generally into two classes: (1) Those which

the United States has purchased from the Indians and paid for, the Indian claim thereto being thus completely extinguished; and (2) those which the United States agrees to dispose of for the benefit of the Indians, without, however, becoming bound to purchase the lands, whereby the claim of the Indians remains unextinguished until the lands are finally sold.

The department agrees with you that as to the first class the Indians have no further concern and that after the cession such lands are properly under the jurisdiction of the General Land Office.

The department also agrees with you that the Indians are rightfully entitled to the use and benefit of the lands coming within the second class until they shall have been finally disposed of, with the condition, however, that the use thereof shall in nowise interfere with the speedy sale or other disposition provided by law. There should be no difficulty in properly handling such cases through joint cooperation between your office and the General Land Office. There can be no objection to permitting the use of such lands by the Indians or for grazing purposes for the benefit of the Indians, provided always that such use is so controlled as to not interfere with the settlement or sale of the lands. You will in all such cases confer with the General Land Office, with a view of adopting such rules and regulations as may be necessary to secure to the Indians any income that may be properly derived from the lands and at the same time to secure their early sale or settlement, as the law may direct.

In respect to the Round Valley Indian Reservation in California, specifically referred to by you, the act of October 1, 1890 (26 Stat., 658), provides for the survey and allotment of the agricultural lands to the Indians in severalty, for the reservation of a reasonable amount of grazing and timber lands, and for the survey of the remainder of grazing and timber lands into tracts of 640 acres, and the sale of the same, the proceeds thereof, after paying the expenses, to be placed in the Treasury of the United States to the credit of the Indians.

The act of February 8, 1905 (33 Stat., 706), directed that all the lands relinquished from the Round Valley Indian Reservation under the act of October 1, 1890, supra, should be surveyed, reappraised, and thereafter be subject to settlement and entry under the provisions of the homestead laws of the United States, and that all the lands thus opened to settlement remaining undisposed of at the expiration of five years from the taking effect of the act might be sold and disposed of for cash, the proceeds to be disposed of as provided in the act of 1890.

Under these provisions of law this reservation clearly falls within the second class, and the Indians are entitled to possession of the lands until the same shall have been settled upon, entered, or sold. You will immediately confer with the General Land Office, with a view to entering into an arrangement along the lines suggested herein.

A copy of this letter will be sent to the Commissioner of the General Land Office for his information and guidance. Very respectfully,

Samuel Adams, First Assistant Secretary.

To put into effect the foregoing rulings of the department and to provide for concurrent supervision over the lands involved, wherever situated, for the protection and benefit of the Indian owners and protection of prospective settlers, the following instructions are issued:

1. Up to date of entry, sale, or settlement, the lands in class 2 shall be under the jurisdiction of the Bureau of Indian Affairs and under the immediate supervision of the officer in charge of the Indian reservation where the lands are situate.

2. The officer in charge of the Indian reservation will prepare permits for grazing purposes in favor of responsible persons on the form approved by the department September 1, 1911 (5-175a), to which shall be added the following:

It is understood and agreed by the permittee that he will place no improvements upon the lands covered by this permit without first securing the written consent of the officer in charge of the reservation, and all fences and other improvements which he shall place upon the lands shall remain thereon at the expiration of the permit and become the absolute property of the equitable owner of the soil.

It is also understood and agreed by the permittee that from and after the



date of any bona fide settlement, sale, or entry of the lands covered by this permit, or any part thereof, this permit becomes void as to the lands so affected, and the permittee agrees and hereby stipulates that he will not interfere with or in any manner attempt to prevent any person from making settlement, filing, or entry upon any of the lands included in this permit.

The penalty for violating the foregoing conditions and stipulations will be the summary revocation of the permit.

3. No permit shall be issued for a longer period than one year, and all permits shall be subject to the approval of the Secretary of the Interior.

4. Before executing a permit in favor of any person the officer in charge of the reservation will first ascertain from the land office of the district in which the lands are situated if said lands are applied for or are included in any entry of record. And thereafter, upon the execution of a permit, he will furnish the said land office with a description of the lands, the name of the permittee, and length of term, the same to be posted in the land office for the information of the public.

Any and all permits executed under these instructions shall be subject and subordinate to any valid settlement made or maintained under the public-land laws.

5. The officer in charge of the reservation is charged with the duty of preventing all trespassing on lands in class 2, the collection of trespass fees, and the prosecution of trespassers as provided by law.

6. After date of entry, sale, or settlement the lands in class 2 shall be under the jurisdiction of the General Land Office, and any permit in effect at such date shall cease and determine, and if occupied by any Indian such Indian's right of occupancy shall cease.

7. It shall be the duty of the local land officers to furnish the officer in charge of all Indian reservations within their jurisdiction monthly lists of all applications for entry or purchase, as well as all relinquishments filed, embracing lands in class 2, and to furnish also information when requested as to particularly described tracts.

Approved:

F. H. Abbott,

Assistant Commissioner of Indian Affairs.

Approved July 25, 1912:

S. V. Proudfit,

Assistant Commissioner of the General Land Office.

Approved July 25, 1912:

Samuel Adams,

First Assistant Secretary.

## **MISCELLANEOUS MATTERS.**

### **IMPORTANT SUGGESTIONS CONTESTS.**

#### **Applications to Contest.**

In cases where the entryman is dead, the application should contain a statement of the death of the entryman, as well as any violation of law or departmental regulation, which renders the land subject to contest.

#### **Service.**

Personal service should be made when possible, and every diligence should be exercised to locate the defendant.

In cases of death of entryman, service should be made on all the known heirs. If the heirs are not known, service must be obtained by publication.

All notices of contest should be prepared ready for the signature of the Register or Receiver, or both, when the contest is filed.

Where the heirs of deceased entryman are not known, publication of notice of contest should be made, but where the heirs are known, all the known heirs should receive personal notice of the contest. Where service is made on all known heirs, publication has not been required, even though there may be other heirs.



### **Desert Entries.**

Application to make desert entries should be accompanied with a map, plat, or diagram, showing the streams from water is to be taken, and the plan or method by which the land is to be reclaimed from desert to agriculture in character.

### **Yearly Proof.**

Third yearly proofs must be submitted with a map, plat, or diagram, showing the reclamation plan finally adopted. Final proof must be accompanied with a map, plat, or diagram, showing the character and extent of the improvements made necessary for the reclamation of the land.

Have evidence of water right ready when final desert proof is made.

### **Oil Lands.**

For the act of congress approved March 2, 1911, (36 Stat. 1015), relative to oil and gas lands, and the discovery thereof, see page 459.

### **Indian Lands.**

The rule of the department with reference to the transfer of town lots, will apply to the sale of Indian lands generally. See title assignments.

## CIRCULAR NO. 128.

**SELECTIONS BY STATES OF LANDS WITHDRAWN, CLASSIFIED, OR VALUABLE FOR COAL.**

Department of the Interior,  
General Land Office,  
Washington, June 14, 1912.

Registers and Receivers,

United States Land Offices.

Sirs: Your attention is directed to the act of Congress approved April 30, 1912 (Public, No. 141), entitled "An act to supplement the act of June twenty-second, nineteen hundred and ten, entitled 'An act to provide for agricultural entries on coal lands,' " a copy of which is hereto attached.

The act of June 22, 1910 (36 Stat., 583), entitled "An act to provide for agricultural entries on coal lands," provided that the public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert land law in tracts not exceeding 160 acres, to selection under section 4 of the act approved August 18, 1894 (28 Stat., 422), known as the Carey Act, and to withdrawal under the act approved June 17, 1902 (32 Stat., 388), known as the reclamation act.

By this act (Apr. 30, 1912), the privileges granted in certain cases, as enumerated above, by the act of June 22, 1910, *supra*, are extended to the several States in making selections of lands in satisfaction of grants made by Congress. It is further provided that the Secretary of the Interior may, in his discretion, dispose of any isolated or disconnected tracts, under the laws providing for the sale of such tracts of public land. The conditions and reservations as prescribed by the former act are embodied in this act unchanged.

It will be your duty to accept, subject to future approval, selections, otherwise unobjectionable, presented by the several States in satisfaction of congressional grants, embracing lands withdrawn or classified as coal lands, or valuable for coal, if accompanied by a certificate or statement, in case of each application to select, of the officer or officers authorized to act for and in behalf of the State, to the effect that the application is made in accordance with, and subject to, the provisions and reservations of the act of June 22, 1910 (36 Stat., 583), as supplemented by the act of April 30, 1912 (Public, No. 141).

Should the State deny the existence of coal in the land sought to be selected you will proceed in accordance with existing regulations in such cases.



In relation to selections made by some of the States, prior to the passage of this act, of lands withdrawn or classified as coal, you are informed that the department held, under date of May 18, 1912, in such a case from Wyoming (Lander, 05040), on appeal, as follows:

The tender or filing of a school-land indemnity selection by a State in lieu of lands lost by it in place constitutes a mere offer to exchange, confers no vested right upon the selector and does not prevent the taking or withholding of the land by the United States for public uses or purposes. The transaction is not complete, nor does the right of the State vest until the acceptance and approval of the offer of exchange by the Secretary of the Interior. School indemnity selections offered by States for lands classified as coal or known to be valuable for such deposits could not, prior to April 30, 1912, be accepted or approved; but these selections offered and pending at the date of passage of the act of April 30, 1912, may, in the absence of intervening adverse rights, and upon proper election filed by the States, now be allowed and accepted as of April 30, 1912, if there be no other objection. \* \* \*

Very respectfully,

S. V. PROUDFIT,  
Assistant Commissioner.

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[Public—No. 141.]

An Act to supplement the act of June twenty-second, nineteen hundred and ten, entitled "An Act to provide for agricultural entries on coal lands."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands or are valuable for coal shall, in addition to the classes of entries or filings described in the act of Congress approved June twenty-second, nineteen hundred and ten, entitled "An act to provide for agricultural entries on coal lands," be subject to selection by the several States within whose limits the lands are situate, under grants made by Congress, and to disposition, in the discretion of the Secretary of the Interior, under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in all such lands so selected or sold and of the right to prospect for, mine, and remove the same in accordance with the provisions of said act of June twenty-second, nineteen hundred and ten, and such lands shall be subject to all the conditions and limitations of said act.

Approved, April 30, 1912.

## FORMS.

## APPROVED AND UNAPPROVED.

[4—601.]

No. .... Land Office at ....., 19..

I, ....., of ..... County, ....., do hereby apply to purchase the ..... Section ....., in Township ....., of Range ....., containing ..... acres, according to the returns of the Surveyor-General, for which I have agreed with the register to give at the rate of ..... per acre.

I, ....., Register of the Land Office at ....., do hereby certify that the lot above described contains ..... acres, as mentioned above, and that the price agreed upon is ..... per acre.

....., Register.

[4—002.]

Land Warrant No. .... Register and Receiver's No. ....  
Military Bounty Land Act of .....  
U. S. Land Office, ....., 19..

We hereby certify that the attached Military Bounty Land Warrant  
(Insert date of act.)  
No. .... was on this day received at this office, from ....., of .....  
County, State of .....

....., Register.  
....., Receiver.

I, ....., of ..... County, State of ....., hereby apply to locate and do locate the ..... quarter of Section No. ...., in township No. ...., of range No. ...., in the district of lands subject to sale the Land Office at ....., containing ..... acres in satisfaction of the attached warrant numbered ....., issued under the act of .....

(Give date of act.)

Witness my hand this ..... day of ....., A. D. 190..

....., Register.  
....., Receiver.

I request the patent to be sent to .....

U. S. Land Office, ....., 190..

We hereby certify that the above location is correct, being in accordance with law and instructions.

....., Receiver.  
....., Register.



[4-003.]

(Form approved by the Secretary of the Interior, March 25, 1909.)  
Department of the Interior.

**HOMESTEAD ENTRY.**

(Act February 19, 1909.)

See pages 196, 210.

(Utah.)

[4-003a.]

(Form approved by the Secretary of the Interior, December 8, 1910.)  
Department of the Interior.

**HOMESTEAD ENTRY.**

(Enlarged Homestead Acts, Section 6.)

U. S. Land Office, .....

Serial No. ....

Receipt No. ....

**Application and Affidavit.**

I, ..... (.....), a resident of ....., do  
(Give full Christian name.) (Town, county and State.)  
(Male or female.)

hereby apply to enter under Section 6 of the Act of June 17, 1910 (36 Stat.,  
(In Utah, strike out the act of 1910; in Idaho, strike out the act of 1909.)

531), the ..... Section ....., Township ....., Range ....., .....  
Meridian, containing ..... acres, within the ..... land district; and  
I do solemnly swear that I am not the proprietor of more than 160 acres of  
land in any State or Territory; that I, .....

(Applicant must state whether native-born, naturalized, or has filed declaration of in-  
..... citizen of the United States, and  
tention to become a citizen. If not native born, certified copy of naturalization or  
am .....;  
declaration of intention, as case may be, must be filed with this application.)

(State whether the head of a family, married or unmarried, or over twenty-one  
years of age, and if not over twenty-one, applicant must set forth the facts which con-  
stitute him the head of a family.)

that my post-office address is .....; that this application is honestly  
and in good faith made for the purpose of actual cultivation, and not for the  
benefit of any other person, persons, or corporation; that I will faithfully and  
honestly endeavor to comply with all the requirements of law as to residence  
and cultivation necessary to acquire title to the land applied for; that I am not  
acting as agent of any person, corporation, or syndicate in making this entry,  
nor in collusion with any person, corporation, or syndicate to give them the  
benefit of the land entered, or any part thereof, or the timber thereon; that I  
do not apply to enter the same for the purpose of speculation, and that I have  
not directly or indirectly made, and will not make, any agreement or contract,  
in any way or manner, with any person or persons, corporation, or syndicate  
whatsoever, by which the title which I may acquire from the Government of  
the United States will inure in whole or in part to the benefit of any person  
except myself. I have not heretofore made any entry under the homestead,  
timber and stone, desert land, or preemption laws (except .....

(Here describe former entry or entries by section, township, range, land district,  
.....);  
and number of entry; how perfected, or if not perfected state that fact.)  
that I am well acquainted with the character of the land herein applied for  
and with each and every legal subdivision thereof, having personally examined

same; that there is not to my knowledge within the limits thereof any vein or lodge of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian; that the lands applied for do not contain merchantable timber, and no timber except .....

(Here fully describe amount and kind of timber, if any.)

that it is not susceptible of successful irrigation at a reasonable cost from any known source of water supply except the following areas: .....

(Give the subdivision and area of the lands, of any, susceptible of irrigation.)

and because of the lack of a sufficient supply of water suitable for domestic purposes, continuous residence on the lands applied for is not possible.  
.....

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125 U. S. Criminal Code.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....);

(Give full name and post-office address.)

that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ....., within the .....

(Town.)

(County and State.)

land district, this ..... day of ....., 191..

(Official designation of officer.)

We, ....., of ....., and ....., of ....., do solemnly swear that we are well acquainted with the above-named affiant and the lands described, and personally know that the statements made by him relative to the character of the said lands are true.  
.....

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by .....), and that said affidavit was duly subscribed to before me at ....., this ..... day of ....., 191..

United States Land Office at .....,

....., 191..

(Official designation of officer.)

I hereby certify that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter under Section 6 of the Act of June 17, 1910; that there is no prior valid adverse right to the same, and has this day been allowed.

(In Utah, strike out the act of 1910; in Idaho, strike out the act of 1909.)

Register.

## UNITED STATES CRIMINAL CODE.—CHAP. 6.

Sec. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years. (Act March 4, 1909. 35 Stat., 1111.)



[4—004.]

(Form approved by the Secretary of the Interior, March 25, 1909.)  
Department of the Interior.

## ADDITIONAL HOMESTEAD.

(Act of February 19, 1909.)

See pages 196, 210.

[Form 4—005.]

## APPLICATION FOR AMENDMENT.

See page 351.

[4—006.]

## AGRICULTURAL COLLEGE SCRIP OF JULY 2, 1862.

Agricultural Scrip, No. .... Register and Receiver's No. ....  
State of ....., Land Office, .....,  
....., 18..

We hereby certify that the attached Scrip, No. ...., State of .....,  
was on this day received at this office, from ....., of ..... County, State  
of .....

....., Receiver.  
....., Register.

I, ....., of ..... County, State of ....., hereby apply to locate  
and do locate the ..... quarter of Section No. ...., in Township No. ....,  
of Range No. ...., in the district of lands subject to sale at the Land  
Office at ....., containing ..... acres, in satisfaction of the attached scrip  
numbered ....., State of ....., issued under the Act of July 2, 1862.

Witness by hand this ..... day of ....., A. D. 18..

Attest: .....  
....., Receiver.  
....., Register.

I request the patent to be sent to ..... Land Office, .....,  
....., 18..

We hereby certify that the above location is correct, being in accordance  
with law and instructions.

....., Register.  
....., Receiver.

[4—007.]

(Form approved by the Secretary of the Interior, November 12, 1907.)  
Department of the Interior.

## HOMESTEAD ENTRY.

U. S. Land Office, ....., No. ....  
Application.

I, ..... (.....), a resident of ....., do hereby  
(Give full Christian name.) (Town, County, and State.)  
(Male or female.)

apply to enter, under Section 2289, Revised Statutes of the United States,  
the ..... Section ....., Township ....., Range ....., ..... Meridian,

containing ..... acres, within the ..... land district; and I do solemnly swear that I am not the proprietor of more than 160 acres of land in any State or Territory; that I .....

(Applicant must state whether native born, naturalized, or has filed declaration of intention to become a citizen. If not native born, certified copy of naturalization or declaration of intention, as case may be, must be filed with this application.)  
 citizen of the United States, and am .....;  
 (State whether the head of a family, married or unmarried, or over twenty-one years of age.)

that my post-office address is .....; that this application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making this entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract, in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I may acquire from the Government of the United States will inure in whole or in part to the benefit of any person except myself. I further swear that since August 30, 1890, I have not entered and acquired title to, nor am I now claiming, under an entry made under any of the nonmineral public-land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres; and that I have not heretofore made any entry under the homestead laws (except .....

.....);  
 (Here describe former homestead entry by section, township, range, land district, and number of entry; how perfected, or if not perfected state that fact.)  
 that I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined same; that there is not to my knowledge within the limits thereof any vein or lode or quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian.

.....  
 (Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....);

(Give full name and post-office address.)

that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ....., within the .....

(Town.)

(County and State.)

land district, this ..... day of ....., 19..

.....  
 (Official designation of officer.)

United States Land Office at .....,

....., 19..

I hereby certify that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

.....  
 Register.

Received of the above-named applicant the sum of ..... dollars and



..... cents, being the amount of fees and compensation of the Register and Receiver for the entry of the land, hereinbefore described, under Section 2290, Revised Statutes of the United States.

\$.....

Receiver.

Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[4-007a.]

(Form approved by the Secretary of the Interior July 24, 1912.)

Department of the Interior

# APPLICATION FOR REDUCTION OF THE REQUIRED AREA OF CULTIVATION.

(Sec. 2291, R. S., as amended by Act of June 6, 1912—Public, No. 179.)

U. S. Land Office,....., No.....

I, ....., of .....,  
(Give post-office address.)

having made Homestead Entry No....., for the.....

....., Section....., Township....., Range....., Meridian.....

.....Land District, hereby apply for a reduction of the required area of cultivation, and, being first duly sworn, upon oath make the following answers to the questions printed below, respectively:

Question 1. State fully, by legal subdivisions, (a) the character of the soil, (b) the condition of the surface, (c) whether the land is level or broken, (d) the kind and amount of timber, or other growth, if any, and (e) the altitude, if more than 1,000 feet above the level of the sea.

Answer: .....

.....

Question 2. If you have any improvements on the land, describe the same fully in amount, kind, and value.

Answer: .....

.....

Question 3. When did you establish residence upon the land, and for what periods, if any, have you been absent therefrom since that date?

Answer: .....

.....

Question 4. State the number of acres, if any, cultivated in each legal subdivision, kind of crop planted, and approximate amount harvested, each year, since date of entry.

Answer: .....

.....

.....

Question 5. Describe fully the climatic conditions obtaining in the locality of the land, giving the approximate amount of rainfall and the temperature during the ordinary season of cultivation.

Answer: .....

Question 6. State how many acres of this entry can be cultivated during the second year of the entry and how many acres can be cultivated during the third year of the entry and until final proof, and state fully the reasons why a larger part of the area of the entry can not be cultivated in each such year respectively.

Answer: .....

(Sign here, with full Christian name.)

NOTE.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. See Section 125, United States Criminal Code.

I HEREBY CERTIFY that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by.....);

(Give full name and post-office address.)

that I verily believe affiant to be the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in.....

(County and State.)

(Town.)

Land District, this.....day of....., 19.....

(Official designation of officer.)

#### CORROBORATING AFFIDAVITS.

We, ....., of....., (Give full Christian name.) (Give full post-office address.)

.....years of age, and by occupation.....

and....., of....., (Give full Christian name.) (Give full post-office address.)

.....years of age, and by occupation.....

do solemnly swear that we have been well acquainted with the land for.....

.....years and.....years, respectively; that we have read the state-

ments made in said application; that applicant is a person of truth and veracity,

and that we know said statements to be true.

(Sign here, with full Christian name.)

(Sign here, with full Christian name.)

I HEREBY CERTIFY that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by.....),

and I verily believe affiants to be credible witnesses and the identical persons hereinbefore described,

and that said affidavit was duly subscribed and sworn to before me, at my office in.....

(Town.)

County,

State of....., within the.....

Land District, this.....day of....., 19.....

(Official designation of officer.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. See Section 125, United States Criminal Code.



UNITED STATES LAND OFFICE at .....

We recommend that the application be....., 19.....  
(See out reasons here.)

Register.

Receiver.

This application may be sworn to before any officer having and using a seal. It must be filed in the local land office of the district in which the land is located. It must *not* be forwarded by applicant to the Commissioner of the General Land Office or to the Secretary of the Interior.

The following is quoted from a letter from the Secretary of the Interior to the Commissioner of the General Land Office under date of July 15, 1912:

"The Secretary of the Interior is authorized, upon satisfactory showing therefor, to reduce the required area of cultivation. In the administration of this provision it is not believed that the physical or financial disabilities or misfortune of the entryman should be the grounds of reduction, but the sole question should be as to whether, under the peculiar conditions governing the tract entered, the exaction of cultivation of this particular tract by any entryman to the amount required is reasonable. The exact, special, physical, and climatic conditions of the land entered in each case must, therefore, determine whether the required amount of cultivation should be reduced. \* \* \* As a general regulation governing applications for reduction in area of cultivation, it is directed that all entrymen who desire a reduction shall file applications therefor during the first year of the entry form and upon forms to be prepared, and furnished by the Commissioner of the General Land Office and distributed through the land offices. Where a satisfactory showing is filed in support of an application for reduction, you will submit the same with your recommendation in the premises. Otherwise the application will be by you rejected, subject to the usual right of appeal. The final granting of any reduction in area of cultivation rests with the Secretary of the Interior, who may, in appropriate cases, defer action until final proof.

\* \* \* \* \*

"A mere breaking of the soil will not meet the terms of the statute, but such breaking or stirring of the soil must also be accompanied by planting or the sowing of seed and tillage for a crop other than native grasses."

Sec. 125, U. S. Criminal Code: Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath, state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

[4—008.]

## ADDITIONAL HOMESTEAD ENTRY.

Under Sec. 2306, U. S. Rev. Stat.

No. ....

Application.

I, ....., of ....., County of ....., State of ....., the legal assignee of ....., a beneficiary under Section 2306, Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the Army or Navy of the United States during the war of the rebellion, do hereby apply to enter the ....., Sec. ...., T. ...., R. ...., P. M., containing ..... acres, as additional to his original homestead on the ..... Sec. ...., T. ...., R. ...., P. M., containing ..... acres, entered at ....., per H. E. No. ...., dated ....., 19..

Assignee of .....

I, ....., Register of the United States Land Office at ....., do hereby certify that ....., assignee of ....., filed the above application before me this ..... day of ....., 19.., for the tract therein described, and that there is no prior adverse right to the same.

.....  
Register.

I hereby certify that the hereto attached assignment of additional homestead under Section 2306, Revised Statutes, was this day received from ....., with application to enter the same on ....., Sec. ...., T. ...., R. ...., ..... P. M., that the same might be noted upon the tract books and further action thereon suspended awaiting instructions from the Commissioner; that the fee and commissions are tendered in full. See letter February 18, 1890, circular January 25, 1904, page 238.

.....  
Receiver.

[4-008a.]

(Form approved by the Secretary of the Interior, November 12, 1907.)

Department of the Interior.

### SOLDIER'S ADDITIONAL HOMESTEAD ENTRY BY ASSIGNEE.

U. S. Land Office, ....., No. ....

Application.

I, ..... (.....), a resident of ....., the legal (Give full Christian name.) (Give full post-office address.) (Male or female.) assignee of ....., beneficiary (or beneficiaries) under Section 2306, Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the Army or Navy of the United States during the War of the Rebellion, do hereby apply to enter ....., Section ....., Township ....., Range ....., ..... Meridian, containing ..... acres, within the ..... land district, as additional to the original homestead.. on the ....., Section ....., Township ....., Range ....., ..... Meridian, containing ..... acres, entered at the United States Land Office at ..... per Homestead Entry (or Entries) No. ...., dated ....., 18..; and I do solemnly swear that I am a ..... citizen of the United States, over twenty-one years (State whether native born or naturalized; if naturalized, certified copy of naturalization must be filed with this application.)

of age; that I am the identical person named in the accompanying assignment of ..... the assignee of ....., the original beneficiary (or beneficiaries) entitled to make soldier's additional homestead entry (or entries) of ..... acres of public land under the provisions of Section 2306, Revised Statutes, as additional to the original homestead entry (or entries) above described; that I have purchased same in good faith and am now the holder and owner thereof; that I have not made an entry of public lands as such assignee, and that I have not sold or disposed of said right of entry, but that the same is vested in me unimpaired; that as such assignee I present herewith the said assignments, together with proof of right of entry granted to the said beneficiary (or beneficiaries) under the provisions of said Section 2306.

\* I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined the same; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land; that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian, and is unoccupied, unimproved, and unappropriated by any person claiming the same other than myself (except .....)

.....  
(Sign here, with full Christian name.)

\* Note.—If applicant is not personally acquainted with the character and condition of the land applied for, affidavit as to character and condition may be made by any credible person having the requisite knowledge.



Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S., below.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....);

(Give full name and postoffice address.)

that I verily believe affiant to be a credible person and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in ....., ....., this ..... day of ....., 19..

(Town.)  
(County and State.)

.....  
.....  
(Official designation of officer.)  
United States Land Office at ....., 19..

It is hereby certified that the above application was this day received with the attached assignment of soldier's additional homestead entry that same might be noted on the tract books and further action thereon suspended until advice from the Commissioner of the General Land Office; that the fees and commissions were tendered in full, and that there is no prior or adverse right to the lands applied for.

....., Register.  
....., Receiver.

#### Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[4—008b.]

(Form approved by the Secretary of the Interior, January 19, 1912.)  
Department of the Interior.

#### ISOLATED TRACT.

See page 353.

(Applicable to Nebraska only.)

[4—008c.]

(Form approved by the Secretary of the Interior, January 19, 1912.)  
Department of the Interior.

#### ISOLATED TRACT.

U. S. Land Office, ....., Serial No. ....  
Application and Affidavit.

To the Commissioner of the General Land Office.

....., of ....., respectfully requests that the .....,  
(Give full post-office address.)

Section ....., Township ....., Range ....., ..... Meridian, be ordered into market and sold under the Acts of June 27, 1906 (34 Stats., 517), and March 2, 1907 (34 Stats., 1224), at public auction, the same having been subject to homestead entry for at least two years after the surrounding lands were

entered, filed upon, or sold by the Government. Applicant states that he  
 (Insert statement that affiant is a native-born or naturalized citizen, or has declared  
 intention to become such, as the case may be.)  
 citizen of the United States; that this land contains no salines, coal, or other  
 minerals, and no stone except .....; that there is no timber thereon

(State amount and character.)  
 except ..... trees of the ..... species, ranging from ..... inches to  
 ..... feet in diameter, and aggregating about ..... feet stumpage measure,  
 of the estimated value of \$.....; that the land is not occupied except by  
 ....., of ..... post-office, who occupies and uses it for the purpose  
 of ....., but does not claim the right of occupancy under any of the public  
 land laws; that the land is chiefly valuable for ....., and that applicant  
 desires to purchase same for his own individual use and actual occupation for  
 the purpose of ....., and not for speculative purposes.

That he has not heretofore purchased public lands sold as isolated tracts  
 the area of which when added to the area herein applied for will exceed  
 approximately 480 acres. The lands heretofore purchased by him under said  
 act are described as follows: .....

If this request is granted applicant agrees to have notice published at his  
 expense in the newspaper designated by the register.

(Applicant will answer fully the following questions.)

Question 1. Are you the owner of land adjoining the tract above described?  
 If so, describe the land by section, township, and range.

Answer. ....

Question 2. To what use do you intend to put the isolated tract above  
 described should you purchase same?

Answer. ....

Question 3. If you are not the owner of adjoining land, do you intend to  
 reside upon or cultivate the isolated tract?

Answer. ....

Question 4. Have you been requested by anyone to apply for the ordering  
 of the tract into market? If so, by whom?

Answer. ....

Answer. ....

Question 5. Are you acting as agent for any person or persons or directly  
 or indirectly for or in behalf of any person other than yourself in making said  
 application?

Answer. ....

Question 6. Do you intend to appear at the sale of said tract, if ordered,  
 and bid for same?

Answer. ....

Question 7. Have you any agreement or understanding, expressed or im-  
 plied, with any other person or persons, that you are to bid upon or purchase  
 the land for them or in their behalf, or have you agreed to absent yourself  
 from the sale or refrain from bidding so that they may acquire title to the land?

Answer. ....

(Sign here, with full Christian name.)

We are personally acquainted with the above-named applicant and the  
 land described by him, and the statements hereinbefore made are true to the  
 best of our knowledge and belief.

(Sign here, with full Christian name.)

(Sign here, with full Christian name.)

I certify that the foregoing application and corroborative statement were  
 read to or by the above-named applicant and witnesses in my presence, before  
 affiants affixed their signatures thereto; that affiants are to me personally known  
 (or have been satisfactorily identified before me by .....);

(Give full name and post-office address.)

that I verily believe affiants to be credible persons, and the identical persons  
 hereinbefore described; that said affidavits were duly subscribed and sworn  
 to before me, at my office at ....., this ..... day of ....., 191..

(Official designation of officer.)



[4—011.]

APPLICATION TO PURCHASE.

To the Register and Receiver,

United States Land Office at .....

The undersigned, claimant.. under the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and legislation supplemental thereto, hereby appl... to purchase that Mining Claim known as the ....., Section ....., in Township No. ...., of Range No. ...., ..... Meridian, designated as Lot.. No. ...., said Lot.. No. .... extending ..... feet in length along said ..... vein or lode, but expressly excepting and excluding from this application all that portion of the ground embraced in mining claim.. or survey.. designated at Lot.. No. ...., and also all that portion of any vein or lode the top or apex of which lies inside of said excluded ground; said Lode ..... claim embracing ..... acres in said Mill-Site claim ..... acres, in the ..... Mining District, in the County of ....., and ..... of ....., as shown by the survey thereof, and hereby agree.. to pay therefor ..... dollars, being the legal price thereof.

Dated ....., 190..

I, ....., Register of the Land Office at ....., do hereby certify that the aforesaid Mining Claim or Lot.. No. .... as applied for above, is subject to entry by the above-named applicant..; the area of said Lode ..... claim being ..... acres and of said Mill-Site claim ..... acres, and the legal price thereof ..... dollars.

....., 190..

Register.

[4—012.]

A.

Acts of June 22, 1860, March 2, 1867, and June 10, 1872.

Register and Receiver's No. ....

Certificate of Location No. ....

Issued by virtue of a decree rendered on the ..... day of ..... by the Supreme Court of the United States, for the claim of ..... or ..... legal representatives.

I, ....., hereby apply to locate with the above-described certificate ..... quarter of Section No. ...., in Township No. ...., of Range No. ...., containing ..... acres, in the district of lands subject to sale at .....

Witness my hand this ..... day of ....., A. D. 18..

Attest:

Register.

Receiver.

[4—012a.]

VALENTINE LAND SCRIPT.

Act of April 5, 1872.

Special Certificate of Location E No. ....

Excess Receipt No. ...., \$.....

Register and Receiver's No. ....

Issued to Thomas B. Valentine.

U. S. Land Office,

....., 1..

We hereby certify that the attached Special Certificate of Location E No. .... was on this day received at this office, from ....., of ..... County, State of .....

....., Register.  
....., Receiver.

I, ....., of ..... County, State of ....., hereby apply to locate and do locate the ..... quarter of Section No. .... in Township No. ...., of Range No. ...., ..... Meridian in the District of Lands subject to sale at the Land Office at ....., containing ..... acres, in satisfaction of the attached Special Certificate of Location E No. ...., issued to said Thomas B. Valentine, under Act of Congress approved April 5, 1872.

Witness my hand this ..... day of ....., A. D. 1....

Attest:

....., Register.  
....., Receiver.

U. S. Land Office,  
....., 1...

We hereby certify that the above location is correct, being in accordance with law and instructions.

....., Register.  
....., Receiver.

[4—012b.]

# DEPARTMENT OF THE INTERIOR.

U. S. Land Office, ....., No. ....

## INDIVIDUAL CLAIMANT.

### Application and Affidavit.

Act of July 1, 1898 (30 Stat., 597-620), and Act of May 17, 1906 (34 Stat., 197).

I, ..... (.....), of ....., having made relinquish-  
(Give full Christian name.) (Male or female.) (Town, County, and State.)  
ment of my ..... claim, No. ...., covering ....., Section ....., Town-

(Kind.)  
ship ....., Range ....., ..... Meridian, within the ..... land district,  
containing ..... acres, heretofore included in the conflicting claims of the  
Northern Pacific Railroad Company, or its successor in interest, and myself,  
which relinquishment was duly accepted by the Commissioner of the General  
Land Office, ....., 191., do hereby make application to select in lieu  
of the lands so relinquished the following lands, to-wit: ..... in .....  
land district; and I do solemnly swear that my post-office address is .....,  
that I, an individual claimant, under the Act of July 1, 1898 (30 Stat., 597-  
620), ..... am acquainted with the lands sought to be selected under  
the foregoing application, and have examined every subdivision thereof; that  
there is not to my knowledge within the limits of said land any vein or lode  
of quartz or other rock in place bearing gold, silver, cinnabar, or other mineral  
substance; that there is not within the limits of said land to my knowledge  
any placer or other valuable mineral deposits or any salines; that no portion  
of said land is claimed for mining purposes under local customs or rules of  
miners, or otherwise; that no portion of said land is worked for mineral during  
any part of the year; that said land is essentially nonmineral land; that it  
does not to my knowledge contain any valuable stone, iron, or coal; that it is  
not reserved in any manner, is not subject to any valid claim whatsoever, and  
is not occupied by any settler. And further affiant saith not.

.....  
(Sign here with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally know (or has been satisfactorily identified before me by .....);

(Give full name and post-office address.)  
that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ....., within the .....  
(Town.) (County and State.)  
land district, this ..... day of ....., 191..

.....  
(Official designation of officer.)



## United States Land Office at.....

....., 191..

We hereby certify that we have carefully considered the foregoing application, and have critically examined the plats and records of this office, so far as they apply to the lands sought to be selected. Finding that the application and proofs fully conform to the statute and regulations thereunder, and that the lands selected appear by the records of this office to be subject to such selection, we have accepted the application and have made due notation thereof upon the records pending the advice of the Commissioner of the General Land Office.

....., Register.

....., Receiver.

Note 1.—This application will not be treated as an entry nor will certificate issue thereon until it has been accepted by the Commissioner of the General Land Office.

Note 2.—This affidavit may be made before the Register or Receiver of the local land office or before any other officer authorized to administer an oath.

If the claim relinquished be a desert land claim, timber culture claim, or a timber purchase claim, which has not been carried to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, the applicant must also make proof of the character of the land selected, as required by the regulations controlling that class of claims.

To the end that the applicant may receive an early adjudication of his right to make the transfer or selection, the local officers will forward at once all applications made under this Act.

**United States Criminal Code—Chapter 6 (35 Stat., 1111).**

Sec. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years. Act March 4, 1909 (35 Stat., 1111).

[4—018]

Department of the Interior.

**ADDITIONAL HOMESTEAD.**

Act of April 28, 1904.

U. S. Land Office, ....., No. ....

Application and Affidavit.

Receipt No. ....

I, ....., of ....., do hereby apply to enter under section 2 of the Act of April 28, 1904 (33 Stat., 527), the ..... Section ....., Township ....., Range ....., Meridian, containing ..... acres, as additional to my Homestead Entry No. ...., made ..... at ..... Land Office for the ..... Section ....., Township ....., Range ....., Meridian.

I do solemnly swear that I am the owner of and am residing upon the land included in my original entry above described, and that this application is made for my exclusive benefit as an addition to my original homestead entry, and not directly or indirectly for the use or benefit of any other person or persons whomsoever, and that I have not heretofore made an entry under the homestead laws other than that above described, except .....; that since August 30, 1890, I have not entered and acquired title to, nor am I now claiming, under an entry made under any of the nonmineral public land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres; that I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally

examined same; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian.

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See sec. 5392, R. S.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....); that I verily believe

(Give full name and post-office address.)

affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in....., within the.....

(Town.)

(County and State.)

land district, this.....day of....., 19....

(Official designation of officer.)

We, ....., of....., and....., of ....., do solemnly swear that we are acquainted with the above-named applicant and know that he is the owner of and residing upon the land embraced in his original entry above described.

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by.....); and that said affidavit was duly

(Give full name and post-office address.)

subscribed and sworn to before me at.....this.....day of....., 19....

(Official designation of officer.)

United States Land Office at.....

....., 19....

I hereby certify that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter under section 2289, Revised Statutes of the United States; that there is no prior valid adverse right to the same, and has this day been allowed.

Register.

#### **Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.**

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in any wise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.



[4—018a.]

DEPARTMENT OF THE INTERIOR,  
United States Land Office,

....., 190.....

By authority of General Land Office letter "P" of....., 190....., you are hereby notified that a special agent of that office has filed the following charges against the validity of your..... Entry No..... made....., for..... to wit: .....

You are notified that if you fail to file in this office, within thirty days of date of service of this notice, a written or printed answer, under oath, denying each of said charges, or showing a state of facts rendering said charges immaterial, and applying for a hearing to determine the truth of said charges and answer, or if you fail to appear at a hearing applied for, your said above entry or claim will be rejected, and, if of record, will be canceled.

Very respectfully, .

.....  
Register.

INSTRUCTIONS.

Manner of Proceeding upon Special Agents' Reports.

DEPARTMENT OF THE INTERIOR,  
General Land Office,

Washington, D. C., November 25, 1907.

To Special Agents and Registers and Receivers, United States Land Offices:

The following rules are prescribed for the government of proceedings had upon the reports of special agents of this office. All existing instructions in conflict herewith are superseded.

1. The purpose hereof is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

2. Upon receipt of the special agent's report this office will consider the same and determine therefrom whether the charges, if true, would warrant the rejection or cancellation of the entry or claim.

3. Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the local officers will be duly notified thereof and directed to issue notice of such charges in the manner and form hereinafter provided for, which notice must be served upon the entryman and other parties in interest shown to be entitled to notice.

4. The notice must be written or printed and must state fully the charges as contained in the letter of this office, the number of the entry or claim, subdivision of land involved, name of entryman or claimant or other known parties in interest.

5. The notice must also state that the charges will be accepted as true, (a) unless the entryman or claimant files in the local office within thirty days from receipt of notice a written denial, under oath, of said charges, with an application for a hearing, (b) or if he fails to appear at any hearing that may be ordered in the case.

6. Notice of the charges may in all cases be served personally upon the proper party by any officer or person, or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the postoffice nearest to the land. Proof of personal service shall be the written

acknowledgment of the person served, or the affidavit of the person who served the notice attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered mail shall consist of the affidavit of the person who mailed the notices, attached to the postoffice registry return receipts, or the returned unclaimed registered letters.

7. If a hearing is asked for, the local officers will consider the same and confer with the special agent relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant. The above notice may be served by registered mail.

8. The chief of field division will duly submit, upon the form provided therefor, to this office, an estimate of the probable expense required on behalf of the Government. He will also cause to be served subpoenas upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

9. The special agent must appear with his witnesses on the date and at the place fixed for said hearing, unless he has reason to believe that no appearance for the defense will be made, in which event no appearance on behalf of the Government will be required. The special agent must, therefore, keep advised as to whether the defendant intends to appear at the hearing. The chief of field division may, when present, conduct the hearing on behalf of the Government.

10. If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or fails to appear at the hearing ordered, without showing good cause therefor, such failure will be taken as an admission of the truth of the charges contained in the special agent's report and will obviate any necessity for the Government's submitting evidence in support thereof.

11. Upon the day set for the hearing and the day to which it may be continued the testimony of witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the special agent's charges.

12. If the entryman or claimant fails to apply for a hearing or to appear at a hearing applied for, as provided in paragraph 10, or if a hearing is had, as provided in paragraph 11, the local officers will render their decision upon the record, giving due notice thereof in the usual manner.

13. Appeals or briefs must be filed under the rules and served upon the special agent in charge of hearing. The special agent will not file any appeal or brief unless directed to do so by this office, or the chief of field division.

14. The above proceedings will be governed by the Rules of Practice. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagee, as provided in Rule 8½ of Practice.

15. At the conclusion of the hearing the chief of field division will pay all proper charges for the Government's case, upon proper vouchers when required; and he will at once make return thereon to this office, showing the amount of authorization expended.

Very respectfully,

R. A. Ballinger,  
Commissioner.

Approved:

G. W. Woodruff,  
Acting Secretary.

[4—019]

Form C.

Department of the Interior.

### WATER-RIGHT APPLICATION.

Act June 17, 1902 (32 Stat., 388).

.....Project.  
U. S. Land Office, ..... No.....  
Lands Allotted to Indians.

(Date.)

I, ....., an Indian allottee subject to the jurisdiction  
of the ....., in charge of the.....



Indian....., do hereby apply for a water right under the.....Project, subject to the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), known as the Reclamation Act, and the rules and regulations established thereunder, the water supplied in pursuance thereof to be used for the irrigation of, and to be appurtenant to,..... acres of irrigable land, as shown on plats on file in this office approved by the Secretary of the Interior, within the area described as follows: .....

....., Section....., Township....., Range....., Meridian, an area of..... acres.

The amount of water to be furnished hereunder shall be..... acre-feet of water per annum per acre of irrigable land, as aforesaid, measured at the land; or so much thereof as shall constitute the proportionate share per acre from the water supply actually available for the lands under said project: Provided, That the supply furnished shall be limited to the amount of water beneficially used on said irrigable land.

I hereby agree that the Commissioner of Indian Affairs shall pay from any funds in his hands or subject to his control belonging to me for said water right the estimated cost of construction as fixed by the Secretary of the Interior, namely, the sum of \$..... per acre for the said area of irrigable land, in.....annual installments, and shall pay promptly when due the annual installments and the maintenance and operating charges duly assessed against said land on account of said water right.

It is further agreed that, upon failure to comply with the terms of said Reclamation Act and the regulations thereunder, so far as applicable, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

This application must bear the certificate, as hereto attached, of the water users' association under this project, which has entered into contract with the Secretary of the Interior.

If the Secretary of the Interior has made no contract with a water users' association under this project, I agree to file, upon direction of the Secretary of the Interior, evidence of membership in the water users' association organized under the said project; in default of which, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

And I hereby certify that my postoffice address is....., that the postoffice address of said.....is.....; that I am.....years of age and a bona fide resident upon said land (or an occupant thereof, residing in the neighborhood, namely, upon Section....., Township....., Range....., Meridian, a distance in a direct line of.....miles therefrom); that I hold the following interest in the said tract: .....

.....as duly shown upon the records of.....County,.....; that I have made no other application, now uncanceled, for a water right under said Act of Congress, appurtenant to land now owned or claimed by me, except as follows:

Application No....., Project,, .....for.....Section....., Township.....Range....., Meridian, an area of..... acres, and containing..... acres or irrigable land, as determined by the Secretary of the Interior; and that the present application is made on my behalf, and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly.

It is further understood and agreed that if the interest of the applicant in said land shall cease and said interest shall be held by a party who is not qualified to apply for or hold a water right under the provisions of the Reclamation Act, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

It is further understood and agreed that the evidence of ownership of this water right shall not be issued by the United States until fee simple title to said land is vested in the allottee and after final payment hereon is made,

in default of which this application shall be subject to such action as may be deemed proper by the Secretary of the Interior.

.....  
(Applicant sign here.)

By.....

.....in charge of said

(If the Secretary of the Interior has entered into a contract with a water users' association under the project, the following certificate must be filled out.)

.....  
(Place.)

.....  
(Date.)

I hereby certify that the applicant for this water right has.....  
duly subscribed for the stock of this association for the lands described herein,  
and that all assessments levied against said stock by said association have  
been fully paid up to date.

.....  
Secretary,

.....Water Users' Association.

(Corporate seal.)



4—020.

Department of the Interior.

## WATER-RIGHT APPLICATION.

Act June 17, 1902 (32 Stat., 388).

..... Project.  
 U. S. Land Office..... Serial No.....  
 Lands in Private Ownership.

(Date.)

....., hereinafter called the applicant,  
 hereby applies for a water right under the ..... Unit, .....  
 ..... Project, subject to the provisions of the Act of Con-  
 gress approved June 17, 1902 (32 Stat., 388), known as the Reclamation Act,  
 and the rules and regulations established thereunder, the water supplied in pursu-  
 ance thereof to be used for the irrigation of, and to be appurtenant to, .....  
 acres of irrigable land, as shown on plats approved by the Secretary of the  
 Interior, within the area described as follows: .....  
 .....  
 .....  
 .....  
 Township....., Range....., Section.....,  
 an area of ..... acres.

The quantity of water to be furnished hereunder shall be ..... acre-  
 feet of water per annum per acre of irrigable land, as aforesaid, measured at the  
 land; .....

..... or so much thereof as shall constitute the proportionate  
 share per acre from the water supply actually available for the lands under such  
 project: Provided, That the supply furnished shall be limited to the amount of  
 water beneficially used on said irrigable land: Provided, however, that if measuring  
 devices are not installed at the land, an increase deemed reasonable by the Reclama-  
 tion Service official in charge of the project shall be made for losses of water after  
 passing the point of measurement.

The applicant hereby agrees on behalf of himself, his heirs, administrators,  
 and assigns to pay for said water right the estimated cost of construction as fixed  
 by the Secretary of the Interior, namely, the sum of \$..... per acre  
 for..... acres of irrigable land, .....

..... in not more than..... annual  
 installments, and to pay promptly when due the annual installments and the  
 operation and maintenance charges duly assessed against said land on account of  
 said water right, each and all of which installments and operation and mainte-  
 nance charges are hereby made and shall be a lien against the above-described  
 premises, such liens attaching immediately upon the execution hereof and being  
 enforceable as to each and every installment, or charge, or portion thereof at such  
 time as the same shall become due in pursuance of public notice issued by the  
 Secretary of the Interior.

It is further agreed and provided that such lien or liens shall have the full  
 force and effect of a mortgage or deed of trust and vest in the United States  
 all the rights and powers which might be exercised and all benefits which  
 might be claimed by the mortgagee in a real estate mortgage given to secure the  
 payment of a loan or debt, including the right of foreclosure by or on behalf  
 of the United States in any court of competent jurisdiction and the applicant  
 grants to the United States or its transferee all the rights, powers and,  
 authority in and over the above-described premises which might be exercised by  
 the trustee named in a deed of trust given to secure the payment of a loan or debt.

The applicant further agrees and binds himself, his heirs, administrators, and  
 assigns to pay all taxes and other liens and encumbrances which are now or may  
 hereafter (during the life of the lien herein given to the United States) become a  
 superior lien or encumbrance to that of the United States, and if the applicant,  
 his administrators, executors, heirs, or assigns fail to pay any such tax, lien, or  
 encumbrance when due, the United States may pay the same and add the amount

thereof to the lien held by the United States under this agreement and recover the same.

It is further agreed that upon failure of the applicant to comply with the terms of said Reclamation Act and the regulations thereunder, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

This application must bear the certificate, as hereto attached, of the water users' association under this project, which has entered into contract with the Secretary of the Interior, and the liens which the United States holds against the above-described land for the payment of the building and operation and maintenance charges, may be enforced, at the option of the United States, either directly by the United States or through the medium of the water users' association.

If the Secretary of the Interior has made no contract with a water users' association under this project, the applicant agrees to file, upon his direction, evidence of membership in the water users' association organized under the said project; in default of which, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

And, being duly sworn, the applicant further deposes and says that the post-office address of the undersigned is.....; that the undersigned is a bona fide resident upon said land (or an occupant thereof, residing in the neighborhood, namely, upon Section....., Township....., Range....., Meridian....., a distance in a direct line of.....miles therefrom); that the undersigned holds the following interest in the said tract:

.....  
.....  
.....  
as duly shown upon the records of.....County, .....  
.....; that no other application, now uncanceled, has been made for a water right under said Act of Congress, appurtenant to land now owned or claimed by the undersigned, except as follows:

Application No....., .....Project, .....  
of..... for.....  
....., Section....., Township....., Range....., Meridian....., an area of.....acres and containing.....acres of irrigable land, as determined by the Secretary of the Interior; and that the present application is made in behalf of the undersigned and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat., 1109).

It is further understood and agreed that if the interest of the applicant in said land shall cease and said interest shall be held by a party who is not qualified to apply for or hold a water right under the provisions of the Reclamation Act, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

It is further understood and agreed that the evidence of ownership of this water right shall not be issued by the United States unless fee simple title to said land is vested in the application, or in a qualified assignee hereof, whose aggregate water rights under the said Reclamation Act shall not exceed one hundred and sixty acres, or the maximum limit of area fixed by the Secretary of the Interior, at the time when final payment hereon is due, in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights thereunder and of all moneys paid thereon.

.....  
.....  
Applicant.



ACKNOWLEDGMENT.

The above application must be signed and sealed in duplicate, acknowledged before a duly authorized officer in the manner provided by local law and duly recorded in the records of the county in which the lands are situated.

Filed in the United States Land Office at.....  
 ....., and accepted.....on behalf of  
 (Date.)  
 the United States.

Register.

[SEAL.]

If the Secretary of the Interior has entered into a contract with a water users' association under the project, the following certificate must be filled out:  
 ....., 19....

I HEREBY CERTIFY that the applicant for this water right has duly subscribed (or is the successor in interest of one who has subscribed) for the stock of this association for the lands described herein, and that all assessments levied against said stock by said association have been fully paid up to date.

Secretary.....Water Users' Association.

[Corporate Seal.]

OATH OF DISINTERESTEDNESS.

(Section 3745, U. S. Revised Statutes.)

I do solemnly swear that the copy of contract hereunto annexed is an exact copy of contract made by me personally with.....  
 .....that I made the same fairly, without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said.....  
 .....or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided.

Sworn to and subscribed before me at.....  
 this.....day of....., 191...

Notary Public.

Recorded this.....day of....., 191..., in Volume.....  
 Page....., .....Records of.....  
 County, State of.....

(Signature of Officer.)

[4—020a]

Form B—1.

Department of the Interior.

## WATER-RIGHT APPLICATION.

Act June 17, 1902 (32 Stat., 388).

.....Project.  
 U. S. Land Office..... No.....  
 Lands in Private Ownership.  
 (With Assignment of Credits.)

(Date.)

I, ....., do hereby apply for a water right under the.....Project, subject to the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), known as the Reclamation Act, and the rules and regulations established thereunder, the water supplied in pursuance thereof to be used for the irrigation of, and to be appurtenant to, ..... acres of irrigable land, as shown on plats on file in this office approved by the Secretary of the Interior, within the area described as follows: .....

.....Section....., Township....., Range.....,  
 .....Meridian, an area of.....acres.

The said land, with all the rights and interests of..... to the water right appurtenant thereto and to the payments made thereon has been obtained by me from.....in the following manner: .....

(Give dates of conveyances or other instruments.)

The amount of water to be furnished hereunder shall be.....acre-feet of water per annum per acre of irrigable land, as aforesaid, measured at the land; or so much thereof as shall constitute the proportionate share per acre from the water supply actually available for the lands under said project: Provided, That the supply furnished shall be limited to the amount of water beneficially used on said irrigable land.

I ask to be allowed credit for any and all payments heretofore made by the prior owner under his Water Right Application No....., dated....., and subject to such credit, I agree to pay for said water right the estimated cost of construction as fixed by the Secretary of the Interior, namely, the sum of \$..... per acre for the said area of irrigable land, in.....annual installments, inclusive of all annual installments due under the public notice, and to pay promptly when due the annual installments and the maintenance and operating charges duly assessed against said land on account of said water right.

I further agree that upon my failure to comply with the terms of said Reclamation Act and the regulations thereunder, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

This application must bear the certificate, as hereto attached, of the water users' association under this project, which has entered into contract with the Secretary of the Interior.

If the Secretary of the Interior has made no contract with a water users' association under this project, I agree to file, upon his direction, evidence of membership in the water users' association organized under the said project; in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

And, being duly sworn, I further depose and say that my postoffice address is.....; that I am a bona fide resident upon said land (or an occupant thereof, residing in the neighborhood, namely, upon Section....., Township....., Range....., Meridian, a distance in a direct line of..... miles therefrom); that I hold the following interest in the said tract: .....

.....as duly shown upon the records of.....County,  
 .....; that I have made no other application, now



uncanceled, for a water right under said Act of Congress, appurtenant to land now owned or claimed by me, except as follows: Application No. ...., Project, ..... for....., Section....., Township....., Range....., Meridian, an area of.....acres, and containing.....acres of irrigable land, as determined by the Secretary of the Interior; and that the present application is made in my own behalf, and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly.

It is further understood and agreed that if the interest of the applicant in said land shall cease and said interest shall be held by a party who is not qualified to apply for or hold a water right under the provisions of the Reclamation Act, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

It is further understood and agreed that the evidence of ownership of this water right shall not be issued by the United States unless fee simple title to said land is vested in me at the time when final payment hereon is due, in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights thereunder and of all moneys paid thereon.

.....  
(Applicant sign here.)

State of.....

County of.....

ss.

Subscribed and sworn to before me this.....day of  
....., 19.....

(Seal.)

My commission expires.....

(Official designation of officer.)

(This affidavit may be sworn to by any officer authorized to administer an oath.)

(If the Secretary of the Interior has entered into a contract with a water users' association under the project, the following certificate must be filled out.)

.....  
(Place.)

.....  
(Date.)

I hereby certify that the applicant for this water right has.....  
duly subscribed for the stock of this association for the lands described herein, and that all assessments levied against said stock by said association have been fully paid up to date.

.....  
Secretary,

.....Water Users' Association.

(Corporate seal.)

Form A.

[4-021.]

# HOMESTEADS UNDER THE RECLAMATION ACT.

Application No.....Water Right, ..... Project, .....

Act of June 17, 1902 (32 Stat., 388).

Department of the Interior,

Land Office at.....

....., 190..  
I, ....., do hereby apply for a water right under the.....Project, subject to the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), known as the Reclamation Act, and the rules and regulations established thereunder, the water supplied in pursuance thereof to be used for the irrigation of, and to be appurtenant to, ..... acres of irrigable land, as shown on plats on file in this office approved by the Secretary of the Interior, within the area described as follows: .....

Section....., Township....., Range....., .....  
 Meridian, an area of.....acres; the said land having been entered by  
 me under the said Reclamation Act by Homestead Application No.....,  
 on the.....day of....., 19...

The amount of water to be furnished hereunder shall be.....acre-  
 feet of water per annum per acre of irrigable land, as aforesaid, measured at  
 the land, or so much thereof as shall constitute the proportionate share per  
 acre from the water supply actually available for the lands under said  
 project: Provided, That the supply furnished shall be limited to the amount  
 of water beneficially used on said irrigable land.

I agree to pay for said water right the estimated cost of construction  
 as fixed by the Secretary of the Interior, namely, the sum of \$.....per acre  
 for the said area of irrigable land, in.....annual installments, and to  
 pay promptly when due the annual installments and the maintenance and  
 operating charges duly assessed against said land on account of said water  
 right.

I further agree that, upon my failure to comply with the terms of said  
 Reclamation Act and the regulations thereunder, this application shall be  
 subject to cancellation by the Secretary of the Interior, with the forfeiture  
 of all rights acquired thereunder and of all payments made thereon.

This application must bear the certificate, as hereto attached, of the  
 water users' association under this project, which has entered into contract  
 with the Secretary of the Interior.

If the Secretary of the Interior has made no contract with a water users'  
 association under this project, I agree to file, upon his direction, evidence  
 of membership in the water users' association organized under the said  
 project; in default of which, this application shall be subject to cancellation  
 by the Secretary of the Interior, with the forfeiture of all rights acquired  
 thereunder and of all payments made thereon.

And, being duly sworn, I further depose and say that I have made no  
 application, now uncanceled, for a water right under said Act of Congress,  
 appurtenant to land now owned or claimed by me, except as follows:

Application No. ...., .....Project, of.....  
 for.....Section....., Township.....,  
 Range.....Meridian, an area of.....  
 acres and containing.....acres of irrigable land, as determined by the  
 Secretary of the Interior; and that the present application is made in my own  
 behalf and not at the instance or for the benefit of any other person or any  
 association or corporation, either directly or indirectly.

Applicant.

State of.....  
 County of .....

ss.

Subscribed and sworn to before me this.....day of....., 19...

(Seal.)

My commission expires.....

(This affidavit may be sworn to before any officer authorized to administer an oath.)

If the Secretary of the Interior has entered into a contract with a water  
 users' association under the project, the following certificate must be filled out:  
 ....., 19...

I hereby certify that the applicant for this water right has duly sub-  
 scribed for the stock of this association for the lands described herein, and  
 that all assessments levied against said stock by said association have been  
 fully paid up to date.

Secretary,

(Corporate seal.)

.....Water Users' Association.



[4—021a.]

Form A—1.

Department of the Interior.

## WATER-RIGHT APPLICATION.

Act June 17, 1902 (32 Stat., 388).

.....Project.

U. S. Land Office.....No.....

(With assignment of credits.)

I, ....., do hereby apply for a water right under the.....Project, subject to the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), known as the Reclamation Act, and the rules and regulations established thereunder, the water supplied in pursuance thereof to be used for the irrigation of, and to be appurtenant to, .....acres of irrigable land, as shown on plats on file in this office approved by the Secretary of the Interior, within the area described as follows: .....

.....Section....., Township....., Range....., Meridian, an area of ..... acres; the said land having been entered by me under the said Reclamation Act by Homestead Application, No....., on the.....day of....., 19...., upon relinquishment by.....of his Homestead Entry, No....., for the same land and of assignment to me of credits for payments made by said entryman under his Water-Right Application, No....., dated ....., 19...., under assignment noted hereon.

The amount of water to be furnished hereunder shall be.....acre-feet of water per annum per acre of irrigable land, as aforesaid, measured at the land; or so much thereof as shall constitute the proportionate share per acre from the water supply actually available for the lands under said project: Provided, That the supply furnished shall be limited to the amount of water beneficially used on said irrigable land.

I ask to be allowed credit for all payments heretofore made for the water right appurtenant to the above-described land and hereon assigned to me, and, subject to such credit, I agree to pay for said water right the estimated cost of construction as fixed by the Secretary of the Interior, namely, the sum of \$..... per acre for the said area of irrigable land, in.....annual installments, inclusive of all annual installments due under the public notice, and to pay promptly when due the annual installments and the maintenance and operating charges duly assessed against said land on account of said water right.

I further agree that upon my failure to comply with the terms of said Reclamation Act and the regulations thereunder, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

This application must bear the certificate, as hereto attached, of the water users' association under this project, which has entered into contract with the Secretary of the Interior.

If the Secretary of the Interior has made no contract with a water users' association under this project, I agree to file, upon his direction, evidence of membership in the water users' association organized under the said project, in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

And, being duly sworn, I further depose and say that I have made no application, now uncanceled, for a water right under said Act of Congress, appurtenant to land now owned or claimed by me, except as follows:

Application No. ...., Project, .....for.....Section....., Township....., Range....., Meridian, an area of ..... acres, and containing ..... acres of irrigable land, as determined by the Secretary of the Interior; and that the present application is made in

my own behalf, and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly.

.....  
(Applicant sign here.)

State of.....  
County of .....

ss.

Subscribed and sworn to before me this.....day of....., 19...

(Seal.)

.....  
(Official designation of officer.)

My commission expires.....

(This affidavit may be sworn to before any officer authorized to administer an oath.)  
(If the Secretary of the Interior has entered into a contract with a water users' association under the project, the following certificate must be filled out.)

.....  
(Place.)

.....  
(Date.)

I hereby certify that the applicant for this water right has.....  
duly subscribed for the stock of this association for the lands described herein,  
and that all assessments levied against said stock by said association have  
been fully paid up to date.

.....  
Secretary,

.....Water Users' Association.

(Corporate seal.)

#### Assignment of Credits for Payments Made.

I, ....., of....., being duly  
sworn, depose and say that I am the identical person who made Homestead  
Entry, No. ...., in the.....Land District,  
on....., 19...., for Farm Unit..... in  
Section....., Township....., Range.....  
Meridian; and for value received I hereby assign to.....  
all my right and title in and to any credits for charges heretofore paid on  
the Water-Right Application, No. ...., for the land referred to  
herein. There are no water-right charges against said land due and remaining  
unpaid, except.....

.....  
(Signature.)

.....  
Register.

On this..... day of....., 19...., before me  
personally appeared....., to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged  
that he freely executed the same as therein stated.

(Seal.)

.....  
(Official designation of officer.)

[4—022.]

Act of June 2, 1858.

DEPARTMENT OF THE INTERIOR,  
United States Land Office,

....., 19....

Certificate of Location No....., issued by the Surveyor-General  
at.....for the claim of.....  
or..... legal representatives.

I, ....., hereby apply to locate with the above-  
described certificate.....quarter of section No.....,  
in Township No....., of Range No....., containing.....  
acres in the district of lands subject to sale at.....



Witness my hand this.....day of....., A. D. 19....

Attest:

Register.

Register's Office.

I certify that the above-described tracts have this day been located pursuant to the application, and that the location is correct, being in accordance with law and instructions.

Register.

Register.

[4—022a.]

County of.....

State of....., 19....

To the Commissioner of the General Land Office,

Washington, D. C.

Sir: The undersigned petitioner would respectfully represent that he is a citizen of....., County of....., and State of.....; and that there is an Island in the.....in section....., Township....., Range....., State of.....that said Island has never been surveyed by the United States Government; that he is desirous that the same should be surveyed, in order that it may be disposed of according to the laws of Congress and the regulations of the General Land Office relative to the disposal of lands embraced in fragmentary surveys; and that .....of.....County of....., and State of.....a practical and skillful surveyor, is a suitable person to execute the survey of the same.

Note.—Whenever the affidavits required to accompany applications for the survey of islands before any officer not a clerk of record, the official character and standing of such officer, whether notary public, justice of the peace, U. S. commissioner, or other officer qualified to administer oaths, should be evidenced by the formal certificate of the clerk of the proper court of record or other competent authority.

County of.....

State of....., 19....

.....and.....citizens of.....County of....., being duly sworn, upon their oaths say that they have personal knowledge of an Island in....., in Section....., Township....., Range....., principal Meridian, State of....., application for the survey of which has been made by.....of....., County of....., State of.....; that the said Island contains about.....acres; that the width of the channel between the Island and the nearest main shore is about.....feet, and the depth thereof at ordinary stages of the water is about.....feet; that the Island is about.....feet above high-water mark, not subject to overflow, and the land fit for agricultural purposes; that the configuration of either shore of the mainland has not materially changed since the original survey of the water front on the mainland; that the improvements on said Island are as follows:\*

that the said improvements were made by.....dollars.  
and that the value thereof is about.....

\* If there are no improvements on the island, it must be so stated.

Sworn to and subscribed before me this.....day of....., 19....

County of.....

State of....., 19....

.....and.....citizens of  
.....County of.....  
and State of....., being duly sworn, upon their  
oaths say that, to their certain knowledge, notice of the application of  
.....of.....County of  
....., and State of.....  
for the survey of an Island in the.....in Section.....  
Township....., Range....., .....principal Meridian, in the  
State of....., was served upon.....  
.....  
.....and.....proprietors of the  
lands on the shores opposite said Island; that the said notice was served  
by.....on the.....day of.....,  
19...., and that each of the above-named coterminous proprietors was per-  
sonally cognizant of the said applicant's intention thirty days before the  
date of his application.

Sworn to and subscribed before me this.....day of....., 19....

County of.....

State of....., 19....

We, .....  
....., being duly sworn,  
say that we are bona fide owners of the lands upon the shores opposite the  
Island described in the application for survey made by.....,  
bearing date....., 19...., and that the notice referred to in  
the foregoing affidavit of.....and.....  
was served upon us on the.....day of....., 19....

Sworn to and subscribed before me this ..... day of ..... , 190..

County of .....

State of ..... , 190..

To the Commissioner of the General Land Office,

Washington, D. C.

Sir: I will execute the survey of the Island described in the application  
of ..... of ..... County of ..... and State of .....  
at the rates per mile for specific lines allowed by law for the survey of the  
public lands for the current fiscal year, and as shown by the field notes of  
the survey.



[4—024.]

## NOTICE OF FILING OF ADVERSE CLAIM AGAINST MINERAL APPLICATION.

Department of the Interior,  
United States Land Office,

.....  
.....

Sirs: You will please take notice that on this ..... day of ....., there was filed in this office by ....., as claimant of the ..... claim ..... adverse claim against Application for Mineral Patent No. ...., Survey No. .... of ..... for the ..... claim in ..... Township ....., Range ....., ..... Meridian.

The parties who filed the adverse claim will be required, within 30 days from the date of such filing, to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment; should such adverse claimants fail to do so, the adverse claim will be considered waived and the application for patent be allowed to proceed on its merits.

....., Register.  
....., Receiver.

This notice must be immediately forwarded to the General Land Office. Duplicate to be filed with the case for transmittal with the record.

[4—024b.]

Department of the Interior,  
United States Land Office,

.....,  
(Place.)  
.....  
(Date.)

## NOTICE OF FILING MINERAL APPLICATION.

Mineral Application, Serial No. ....

The Commissioner of the General Land Office.

Sir: On ....., 19.., ..... filed Mineral Application, Serial No. ...., Survey No. ...., for the ....., situate in  
(List alphabetically all locations applied for.)  
Section ....., Township ....., Range ....., ..... Meridian, ..... Mining District, ..... County, exclusive of conflict with .....

Very respectfully,

....., Register.

Note.—This notice must show Serial No.; date of filing; survey No., if lode or surveyed placer; alphabetical list of all locations; name or names of applicant or applicants; description if taken by legal subdivisions, section, township, range; mining district and county; and notation of exclusions.

[4—053.]

Department of the Interior,  
In the United States Land Office

At ....., before the Register and Receiver.

The United States of America,

Plaintiff,

v.

Defendant.

Involving the .....  
Entry No. ....  
for .....  
.....  
.....

# AFFIDAVIT AND MOTION FOR COMMISSION TO TAKE DEPOSITIONS ON INTERROGATORIES.

The undersigned, being duly sworn, on his oath says that he is a special agent of the General Land Office and the agent for the plaintiff in the above-entitled case; that the following persons are material witnesses for the plaintiff in said case and reside as stated, to-wit:

....., residence .....  
 (County.) ..... (State.)  
 ..... residence .....  
 ..... residence .....  
 that each of said witnesses ..... and by reason  
 thereof can not be procured to attend the trial of said case before the Register  
 and Receiver at the local land office; and there is hereto attached and made  
 a part hereof the interrogatories to be asked each of said witnesses upon behalf  
 of the plaintiff herein; that due service of notice of plaintiff's intention to take  
 such depositions has been had upon the defendants on ....., 19.., as more  
 fully appears by the copy of such notice and return thereon herewith filed.

Wherefore, the undersigned, as agent for the plaintiff herein, moves that,  
 after ten days from the filing hereof, a commission with all interrogatories  
 attached issue to ....., a ..... authorized to administer oaths in the  
 County of ....., State of ....., commanding him to take the depositions in  
 the commission directed as by law required, at his office at ....., at 10 a. m.,  
 on ....., 19.., and from day to day thereafter until taken.

Subscribed and sworn to before me this ..... day of ....., 19.., at  
 .....  
 .....  
 (Official designation of officer.)

## ORDER—ALLOWANCE OF MOTION.

The foregoing affidavit and motion being considered, and the undersigned  
 being advised, the said motion is this ..... day of ....., 19.., allowed and  
 commission will issue.

.....  
 Register.  
 .....  
 Receiver.

[4—061a.]

## AFFIDAVIT FOR SELECTIONS

Under Act of June 4, 1897 (30 Stat., 36).

(Forest Reserves.)

To be made by the selector, or other credible person cognizant of the facts,  
 before an officer authorized to administer oaths. Before being sworn,  
 affiant should be advised of penalties of a false oath.

United States Land Office,  
 .....,  
 ....., 19..

....., being duly sworn according to law, deposes and says that  
 he is a citizen of the United States, and that his post-office address is .....;  
 that he is well acquainted with the character and condition of the following-  
 described land, and with each and every legal subdivision thereof, having per-  
 sonally examined the same, to-wit: .....; that his personal knowl-  
 edge of said land enables him to testify understandingly with respect thereto;  
 that there is not, within the limits of said land, any known vein or lode of  
 quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper;  
 that there is not, within the limits of said land, any known deposit of coal, or  
 any known placer deposit, oil, or other valuable mineral; that said land con-  
 tains no salt spring, or known deposits of salt in any form, sufficient to render  
 it chiefly valuable therefor; that no portion of said land is claimed for mining  
 purposes under the local customs or rules of miners, or otherwise; that said land  
 is essentially nonmineral in character, has upon it no mining or other improve-  
 ments, and is not in any manner occupied adversely to the selector; and that  
 the selection thereof is not made for the purpose of obtaining title to mineral  
 land,  
 .....



I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by .....), and I verily believe him to be a credible person and the person he represents himself to be; and that this affidavit was subscribed and sworn to before me at my office in ....., on this ..... day of ....., 19..

[4—062.]

### NON-MINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Non-Mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

Department of the Interior,  
United States Land Office,

....., 190..  
....., being duly sworn according to law, deposes and says that he is the identical ..... who is an applicant for Government title to the .....; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that his post-office address is .....

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by .....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in ....., within the ..... land district on this ..... day of ....., 19..

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.) State of Missouri, County of ....., ss.

On this ..... day of ....., 19.., before me ..... within and for the County and State aforesaid, personally appeared ....., who, being

first duly sworn upon his oath, says that the ....., Section ....., Township ....., N., Range ....., 5th Principal Meridian, is not claimed by any one as an actual settler or otherwise, other than himself. That I am a native born citizen of the United States.

Subscribed and sworn to before me this, the ..... day of ....., 19..

State of Missouri, County of ....., ss.

On this, the ..... day of ....., 19.., before me ..... personally appeared ..... and ....., who being first duly sworn, upon their oaths depose and say that the ....., Section ....., Township ....., N., Range ....., 5th P. M., is not claimed by any one as an actual settler or otherwise, other than the above named affiant .....

Witnesses:

Subscribed and sworn to before me this ..... day of ....., 19..

[4—062a.]

### NON-SALINE AFFIDAVIT.

Department of the Interior,  
United States Land Office,

....., 19..  
....., being duly sworn according to law, deposes and says that he is the identical ..... who is an applicant for Government title to the .....; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any salt spring, or deposits of salt in any form, such as make it chiefly valuable on account thereof; that no portion of said land is claimed for saline purposes; that said land is essentially non-saline land, and that his application therefor is not made for the purpose of fraudulently obtaining title to saline land, but with the object of securing said land for agricultural purposes, and that his post-office address is .....

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by .....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in ....., within the ..... land district, on this ..... day of ....., 19..

Note.—This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief, and only before the officer taking the other affidavits required of the entryman.

The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)



[4—067.]

Department of the Interior.

## ADJOINING FARM HOMESTEAD.

(Section 2291, Revised Statutes.)

U. S. Land Office, ..... Serial No. ....

Final Affidavit.

I, ....., of ....., having made a Homestead Entry of ..... Section ..... Township ....., Range ....., ..... Meridian, subject to entry at ....., Serial No. ...., for the use of an adjoining farm owned  
(Name of land office.)

and occupied by me on the ....., Section ....., Township ....., Range ....., ..... Meridian, under Section 2289 of the Revised Statutes, do now apply to perfect my claim thereto by virtue of Section 2291 of the same, and for that purpose do solemnly swear that I am a citizen of the United States; that I have continued to own and occupy the land constituting my original farm, having resided thereon since the ..... day of ....., 19.., to the present time, and having made use of the said entered tract as a part of my homestead, and have improved the same in the following manner, viz.: ....., that no part of said land has been alienated, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and further, that I have not heretofore perfected or abandoned an entry under the homestead laws.

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S.)

[4—069.]

Department of the Interior,

United States Land Office,

(For taking the testimony of Claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof.")

## AFFIDAVIT REQUIRED OF CLAIMANT IN COMMUTED HOMESTEAD ENTRIES.

I, ....., claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my Homestead Entry, No. ...., made upon the ..... Section ....., Township ....., Range ....., ..... Meridian, do solemnly swear that I made settlement upon said land on the ..... day of ....., and that since such date, to-wit: on the ..... day of ....., I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated ..... acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except .....

(Sign here, with full Christian name.)

Subscribed and sworn to before me this.....day of....., 19...., at my office at ..... in ..... County, .....

(Official designation.)

[4—070.]

Homestead Proof.

## FINAL AFFIDAVIT REQUIRED OF HOMESTEAD CLAIMANTS.

Section 2291 of the Revised Statutes of the United States.

I, ....., having made a Homestead entry of the ..... Section No. ...., in Township No. ...., of Range No. ...., subject to entry at ....., under Section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of Section No. 2291 of the Revised Statutes of the United States; and for that purpose do solemnly .....

that I am a citizen of the United States; that I have made actual settlement upon and have cultivated said land, having resided thereon since the ..... day of ....., 1...., to the present time; that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except .....

I, ....., do hereby certify that above affidavit was subscribed and sworn to before me this ..... day of ....., 190., at my office at ....., in ..... County, .....

[4—072.]

#### APPLICATION TO CONTEST.

(Note.—This application must be filed in duplicate.)

Serial No. ....

Contest No. ....

Department of the Interior,  
United States Land Office,  
.....

I, the undersigned, ....., residing at ....., being duly sworn, upon my oath state: That I am well acquainted with the tract of land embraced in ..... entry, Serial No. ...., made on ....., 19.., by ....., whose present place of residence is ....., State of ....., for the ..... Section ....., Township ....., Range ....., ..... Meridian, and know the present condition of the same; that said land is ..... in character; that in so far as I know the said entry is the only proceeding now pending for the acquisition of title to said land except ..... that said .....

(Here state fully the grounds of the contest.)

that I claim an interest in or desire and intend, if permitted to do so, to acquire title to the said land under the provisions of ..... law, and state the following facts which show my qualifications to do so: I am not under the age of twenty-one years, I am a citizen of the United States, or have declared my intention to become such, I have not heretofore made any entry which would disqualify me from making entry under the above-mentioned law, I have not since August 30, 1890, acquired title to, nor am I now claiming under any of the agricultural land laws, an amount of land which, together with the land described above, or the part thereof which I desire to enter, will exceed in the aggregate 320 acres, and I am not the proprietor of more than 160 acres of land in any State or Territory; and I further swear that this contest is not being collusively or speculatively initiated, but is being instituted and will be diligently prosecuted in good faith for the sole privilege of acquiring title to said land or some part thereof in my own and sole interest.

I, therefore, ask that I be permitted to prove the allegations made in this affidavit at such time and place as may be named therefor, and that after proving said allegations, and my payment of all the costs incurred in this proceeding, I be permitted to make entry of said lands or a part thereof under the laws above specified.

I desire that all papers affecting this contest be served upon me at the following address: .....

(Signature.)

I hereby certify that the foregoing affidavit was subscribed and sworn to before me by the affiant named therein, after it had been read to or by him, in my presence, in ..... on this ..... day of ....., 191., he, the said affiant, being well known to me to be the same person he therein represents himself to be, or having been fully made known to me as such person by ....., of ....., who is well known to me.

(Official designation.)

Also appeared, at the same time and place, ....., residing at ....., and ....., residing at ....., who being duly (Post-office address.)



sworn, depose and say: That they are acquainted with the tract described in the above affidavit, and know from personal knowledge and observation that the statements therein made are true.

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by .....); and that the said affidavit was duly subscribed before me at ..... this ..... day of ....., 191..

(Official designation.)

Note.—If the application is filed by a person not seeking to acquire title to or claiming an interest in the land, or by one who does not show his qualifications as an entryman, it must be referred to the Chief of Field Division.

[4—072a.]

#### NOTICE OF CONTEST.

(For personal service.)

Serial No.....  
Contest No.....

Department of the Interior,  
United States Land Office.

To ..... of ....., Contestee:

You are hereby notified that ....., who gives ..... as his post-office address, did on ....., 191.., file in this office his duly corroborated application to contest and secure the cancellation of your ....., Entry No. (Kind of entry.)

....., Serial No. ...., made ....., 19.., for ....., Section ....., Township ....., Range ....., ..... Meridian, upon the grounds set forth in the copy of said application to contest which is attached to and made a part of this notice.

You are, therefore, further notified that the said allegations will be taken by this office as having been confessed by you, and your said entry will be canceled thereunder without your further right to be heard therein, either before this office or on appeal, if you fail to file in this office, within thirty days after service of this notice, your answer, under oath, specifically meeting and responding to these allegations of contest, or if you fail within that time to file in this office due proof that you have served a copy of your answer on the said contestant, either in person or by registered mail. If this service is made by the delivery of a copy of your answer to the contestant in person, proof of such service must be either the said contestant's written acknowledgment of his receipt of the copy, showing the date of its receipt, or the affidavit of the person by whom the delivery was made stating when and where the copy was delivered; if made by registered mail, proof of such service must consist of the affidavit of the person by whom the copy was mailed, stating when and the post-office to which it was mailed, and this affidavit must be accompanied by the postmaster's receipt for the letter.

You should state in your answer the name of the post-office to which you desire future notices to be sent to you.

....., Register.  
....., Receiver.

#### PROOF OF PERSONAL SERVICE.

State of ....., County of ....., ss.

....., being first duly sworn, on his oath says, that he is over the age of 18 years; that on ....., 191.., he served the above notice of contest by\* .....

(Signature.)

Subscribed and sworn to before me ....., 191..

(Official designation.)

\* See Rule of Practice 7 as to the manner of making personal service.

Department of the Interior.  
United States Land Office.

Contest of ....., Entry No. ...., dated ....., 19., for the  
..... of Sec. ...., Twp. ...., R. ....

State of ....., County of ....., ss.:  
 ....., being duly sworn, deposes and says that he is ..... in the above-entitled contest; that he has, with a view to obtaining personal service of the notice, made diligent search and inquiry for the defendant within the last fifteen days, as follows: That he has made personal inquiry of ....., postmaster at ....., the address of record, and of ....., postmaster at ....., that being the nearest post-office to the land involved, as to the place of residence or whereabouts of said ....., and that he has made like inquiry of ....., who reside in the immediate neighborhood of said land, and from his own personal knowledge, as well as the information acquired from said parties, states that said ..... abandoned said land and went to ....., in the State of ....., on or about the ..... day of ....., 1...; that he has since that time been absent from said land and can not be found, and that his last place of residence or post-office address was ..... and on account thereof a personal service of the notice of said contest can not be made.

Wherefore affiant asks for an order to serve the said notice by publication.

Subscribed and sworn to before me this ..... day of ....., 191..  
(Seal.)

It appearing to the satisfaction of this office, from the foregoing affidavit, that personal service of the notice of said contest can not be made upon the defendant, it is hereby ordered that notice of contest be served upon the defendant by publication, pursuant to the rules of practice in such cases made and provided.

....., Register.  
....., Receiver.

Note.—Personal service is required in all cases where the defendant can be found, whether he is a resident or nonresident of the State.

[4—072c.]

## NOTICE OF CONTEST.

(For publication.)

Department of the Interior.  
United States Land Office.

To . . . . ., of . . . . ., Contestee:

You are hereby notified that ....., who gives ....., as his post-office address, did on ....., 191., file in this office his duly corroborated application to contest and secure the cancellation of your ....., Entry

No. ...., Serial No. ...., made ....., 19.., for ....., Section ....., Township ....., Range ....., Meridian, and as grounds for his contest he alleges that ..... (Here state grounds of contest.)

You are, therefore, further notified that the said allegations will be taken



by this office as having been confessed by you, and your said entry will be canceled thereunder without your further right to be heard therein, either before this office or on appeal, if you fail to file in this office within twenty days after the fourth publication of this notice, as shown below, your answer, under oath, specifically meeting and responding to these allegations of contest, or if you fail within that time to file in this office due proof that you have served a copy of your answer on the said contestant either in person or by registered mail. If this service is made by the delivery of a copy of your answer to the contestant in person, proof of such service must be either the said contestant's written acknowledgment of his receipt of the copy, showing the date of its receipt, or the affidavit of the person by whom the delivery was made, stating when and where the copy was delivered; if made by registered mail, proof of such service must consist of the affidavit of the person by whom the copy was mailed, stating when and the post-office to which it was mailed, and this affidavit must be accompanied by the postmaster's receipt for the letter.

You should state in your answer the name of the post-office to which you desire future notices to be sent to you.

....., Register.  
 ..... , Receiver.

Date of first publication.....  
 Date of second publication.....  
 Date of third publication.....  
 Date of fourth publication.....

Copy of this notice, as published, together with copy of the affidavit of contest, must be sent by the contestant, within 10 days after the first publication, by registered mail, directed to the party for service upon whom such publication is being made, at the last address of such party as shown by the records of the Land Office, and also at the address named in the affidavit for publication, and also at the post-office nearest the land.

Copy of this notice, as published, must be posted in the office of the register, and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as hereinabove provided.

[4—072d.]

#### ANSWER BY CONTESTEE.

Serial No. ....  
 Contest No. ....

Department of the Interior,  
 United States Land Office.

.....  
 .....

V.

Contest of ....., Entry No. ...., dated ....., 19.., for the  
 ....., Sec. ...., Tp. ...., R. ....  
 State of ....., County of ....., ss.:

....., defendant in the above-entitled case, being first duly sworn,  
 for answer to the application to contest says that .....

I desire that all notices or other papers shall be sent to me for service at  
 the following address: .....

Subscribed and sworn to before me this ..... day of ....., 191..  
 .....

#### PROOF OF SERVICE.

....., being first duly sworn, deposes and says that on .....,  
 19.., he served the above answer by\* .....

Subscribed and sworn to before me this ..... day of ....., 191..  
 .....

\*See "Notice of Contest," Form 4—072a, for method of service of  
 answer.

[4—072e.]

## NOTICE OF HEARING.

Department of the Interior,  
United States Land Office.

Serial No. ....  
Contest No. ....

A sufficient contest affidavit having been filed in this office by .....,  
contestant, against ....., Entry No. ...., Serial No. ...., made  
(Kind of entry.)  
....., for ....., Section ....., Township ....., Range .....,  
Meridian, by ....., Contestee, in which it is alleged that .....,  
and the said contestee having filed a sufficient answer thereto, said parties are  
hereby notified to appear, respond, and offer evidence touching said allegation  
at 10 o'clock a. m. on ....., 191., before ..... \* (and that final  
hearing will be held at 10 o'clock a. m. on ..... 191., before) the Register  
and Receiver at the United States Land Office in .....

....., Register.  
....., Receiver.

\* If the testimony is to be taken before the Register and Receiver, and  
not under Rule 28, the words in ( ) parentheses should be erased.

[4—072f.]

Department of the Interior,  
United States Land Office.

.....  
(Place.)  
.....  
(Date.)

.....  
v.  
.....  
To .....

Sir: You are hereby notified that by letter of even date herewith we have  
transmitted to the General Land Office the papers in the above-entitled case,  
involving ..... entry No. .... for ....., with our recommendation that  
the entry be canceled for failure to file answer to the allegations of the contest.  
Very respectfully,

....., Register.  
....., Receiver.

[4—072g.]

Department of the Interior,  
United States Land Office.

.....  
(Place.)  
.....  
(Date.)

Commissioner of General Land Office.

Sir: We transmit herewith all the papers in the contest of ..... v.  
....., involving ..... Entry No. ...., made ..... for .....

Notices were issued ..... and proof of due service of a copy of the  
contest affidavit and notice upon the contestee was filed by the contestant on  
.....

The contestee has failed to file answer within the time allowed, and we  
therefore recommend the cancellation of the entry.

Both parties have been notified by registered mail of the action taken.  
Very respectfully,

....., Register.  
....., Receiver.



[4—073.]

Department of the Interior.

FINAL AFFIDAVIT.

Act June 17, 1902 (32 Stat., 388).

..... Project.

U. S. Land Office ..... Serial No. ....

(Date.)

I, ....., having filed in the local land office at ..... Water Right Application, No. ...., subject to the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), and the acts amendatory thereof or supplementary thereto, and the rules and regulations thereunder, embracing ..... acres of irrigable land within ..... Section ....., Township ....., Range ....., ..... Meridian, an area of ..... acres, as shown by the approved plat on file in the local land office, in order to perfect a right to the use of water appurtenant to said irrigated land by virtue of the aforesaid Act of Congress, do solemnly swear (or affirm) that I have made Homestead Entry, No. ...., for the tract of land hereinbefore described, subject to the aforesaid Acts of Congress, and have made the necessary final proof of residence, cultivation, and improvement as required by the general homestead laws; that

.....  
(Here state briefly compliance with the regulations requiring that one-half of the irrigable area must be cleared and leveled, sufficient laterals constructed, land put in proper condition, watered, cultivated, and at least one satisfactory crop raised thereon.) and that I have made full payment for the said area of irrigable land of the estimated building charge assessed against it in connection with this project, being \$....., and all operation and maintenance charges due at this date.

(Signature.)

State of ....., County of ....., ss.:

Subscribed and sworn to before me this ..... day of ....., 191..

(Seal.)

(Official designation of officer.)

My commission expires .....

(This affidavit may be sworn to by any officer authorized to administer an oath.) .....and.....being duly sworn, depose and say that they have read the foregoing; that they are well acquainted with the affiant and the land described; and that to their personal knowledge know that the statements in regard to the residence upon or occupancy thereof and the reclamation of said land are true.

Subscribed and sworn to before me this.....day of....., 191..

(Seal.)

(Official designation of officer.)

[4—074a.]

(Affidavit required of parties appearing as assignees of original entrymen.)

DESERT-LAND ENTRY.

(Acts of March 3, 1877, and March 3, 1891.)

I, ....., of ....., claiming to be assignee of ..... who made entry No..... of the.....of section....., in township.....of range....., on the.....day of.....19.., at the district land office at ....., do solemnly swear that I am a bona fide resident citizen of the State or Territory of.....and a.....citizen of the United States, or have declared my intention to become a citizen of the United States; that the said....., who made said entry, did on the .....day of....., 19.., transfer his right thereunder to me, by virtue of deed or instrument of writing of which a certified copy is here-

with attached; and further, that I do not hold by assignment or otherwise more than three hundred and twenty acres of land entered under said acts, the only lands so held by me being described as follows, and being embraced in entries indicated as follows, viz: \*.....; that since August 30, 1890, I have not acquired title to, nor am I now claiming under any of the agricultural public land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate three hundred and twenty acres, except\*.....

My postoffice address is.....

(Sign plainly, with full Christian name.)

Sworn to and subscribed before me this.....day of....., 19.., at my office in.....County.....

\*Here insert statement of land of entries in form following, viz: "..... of section....., township.....of range....., entered by....., on the .....day of....., 19...., entry No....., .....series."

[4—074b.]

Form approved by the Secretary of the Interior, July 9, 1912.  
Department of the Interior.

### DESERT LAND ENTRY.

U. S. Land Office....., No.....  
.....Yearly Proof.

Testimony of Claimant.

(Read carefully the instructions on the back hereof.)

I, ....., do solemnly swear that I am the  
(Give full Christian name.)  
.....who made Desert-Land Entry No.....,  
of the.....  
(Insert "same person" or "assignee of"—giving name of original entryman.)  
Section....., Township....., Range.....,  
.....Meridian, containing ..... acres, situated in .....  
(County and State.)  
at the ..... Land office, under the Desert-Land Laws  
of the United States; that I am a bona fide resident citizen of the State of  
..... (or that on.....I removed to  
(Date of removal.)  
..... for the reason that .....);  
(Occasion for removal.)  
that my post-office address is.....; that during the.....  
year after making said entry I expended in improvements necessary for the  
ultimate reclamation of the land, the sum of.....,  
being not less than one dollar per acre of the area thereof, the expenditure of  
which is fully set forth in the following items, to wit:

In the actual construction of reservoirs, dams, canals, ditches,  
laterals, wells (claimant will cross out the items not alleged), the  
water from which is to be used for irrigating said land located

..... \$.....  
In the purchase of.....  
(Materials or machinery.)

actually used in constructing.....  
or actually installed for.....

In building a fence located.....

In the first clearing or breaking of ..... acres in the

.....  
(Give location.)

In surveying for the purpose of ascertaining levels for.....

.....  
In cash payment for stock in .....

.....  
Company, a receipt for which is hereto attached together with the



certificate required under par. 18 of the Desert-Land Circular approved Sept. 30, 1910 (39 L. D., 253).

Further expenditures: Remarks, such as length and capacity  
of ditches, etc., .....

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by.....)

(Give full name and post-office address.)

to be the identical person hereinbefore described; and that said affidavit was  
duly subscribed and sworn to before me, at my office, in.....

land district, this ..... day of ..... (County.) ..... (State.) 191..

(Official designation of officer.)

**Affidavit to Be Made Only in Case Proof Is Taken Outside of County.**

I solemnly swear that ....., whose office is

(Officer before whom proof is executed.)

approximately ..... miles from the entry and outside the county in which the land is situated, is the officer nearest to (or most accessible from) the land authorized to administer oaths in desert-land cases, within the land district, for the reason that the office of ....., the nearest officer within the county before whom the proof might have been executed, is located .....

(Facts as to nearness or accessibility of officer in county.)

(Sign here, with full Christian name.)

Sworn to before me this ..... day of ....., 191..

(Designation of officer.)

### Testimony of Witness.

(Read carefully the instructions on the back hereof.)

I, ....., of ....., do

(Give full Christian name.)

(Give full post-office address.)

solemnly swear that I am well acquainted with the land hereinbefore described and embraced in Desert-Land Entry No. ...., made at the ..... Land Office, by ....., and there was expended for the ultimate reclamation of said land during the ..... year after date of entry the sum of ..... dollars as is specifically set forth in the following items, to-wit:

(Cost of materials and labor to be itemized separately.)

[illegible]

My knowledge in regard to the existence of said improvements was obtained from personal examination, and the values thereof are reasonably stated.

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me per-

sonally known (or has been satisfactorily identified before me by .....  
 .....); that I verily believe affiant to be  
 (Give full name and post-office address.)  
 the identical person hereinbefore described; and that said affidavit was duly  
 subscribed and sworn to before me, at my office, in .....  
 ....., within the .....  
 (Town.) (County.) (State.)  
 land district, this ..... day of ....., 191..

(Official designation of officer.)

### Testimony of Witness.

I, ..... of .....  
 (Give full post-office address.) (Give full Christian name.)  
 do solemnly swear that I am well acquainted with the land hereinbefore  
 described and embraced in Desert-Land Entry No. ...., made at  
 the ..... Land Office, by ..... and  
 there was expended for the ultimate reclamation of said land during the  
 ..... year after date of entry the sum of ..... dollars as  
 is specifically set forth in the following items, to-wit:  
 (Cost of materials and labor to be itemized separately.)

..... \$.....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....

My knowledge in regard to the existence of said improvements was  
 obtained from personal examination, and the values thereof are reasonably  
 stated.

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be  
 punished as provided by law for such offense. (See Sec. 125 U. S. Criminal  
 Code—over.)

I hereby certify that the foregoing affidavit was read to or by affiant in  
 my presence before affiant affixed signature thereto; that affiant is to me  
 personally known (or has been satisfactorily identified before me by .....  
 .....); that I verily believe affiant to be  
 (Give full name and post-office address.)  
 the identical person hereinbefore described; and that said affidavit was duly  
 subscribed and sworn to before me, at my office, in .....  
 ....., within the .....  
 (Town.) (County.) (State.)  
 land district, this ..... day of ....., 191..

(Official designation of officer.)

### Read Carefully Before Preparing the Affidavits.

The law requires an expenditure of not less than three dollars per acre,  
 for the entire area entered, in the necessary irrigation, reclamation, and culti-  
 vation of the land, by means of main canals and branch ditches, and in the  
 permanent improvements upon the land.

During the first year after entry the claimant must file with the Register  
 proof, consisting of his own affidavit and the separate affidavits of two wit-  
 nesses, taken at the same time and place and before the same officer taking  
 the claimant's acknowledgment, that the full sum of one dollar per acre, for  
 the entire area, has been so expended, and like proof must be made for each  
 year thereafter until the full sum of three dollars per acre has been expended;  
 and at the end of the third year the claimant must file a map or plan showing  
 the character and extent of the improvements.

### Expenditures for Which Proof Will Not Be Accepted.

No proof of expenditure will be accepted unless the expenditure was essen-  
 tial to the actual or ultimate reclamation of the land.



A dwelling house is not essential to reclamation, and no allowance will be made therefor.

Plowing, after the first breaking of the land, seeding land to crops, irrigating, cultivating, and harvesting crops are not items for which proof of expenditure will be accepted.

The cost of windmill or pump will not be allowed unless it is specifically shown that the same was essential to the contemplated mode of irrigation and was not installed for domestic uses.

The cost of material for necessary construction work will not be allowed unless it actually has been applied to that use, and it must be so stated in the affidavit.

The cost of tools, implements, wagons, and repairs to same, used in construction work, can not be computed in the cost of construction.

No expenditure for surveying will be allowed unless it is specifically stated that it was for the purpose of establishing lines and levels of canals and ditches.

#### Expenditures for Which Proof Will Be Accepted.

Cost of constructing storage reservoir, well, canals, ditches, and maintaining same. The cost of each item must be stated separately, and the length, capacity, and location of the ditches and canals must be given.

Cost of water right, if accompanied with evidence of cash payment and the certificate required under par. 18 of the Desert-Land Circular approved September 30, 1910 (39 L. D., 253).

Cost of clearing land, if it is shown to be the first clearing. The extent, character, and location of all clearing must be fully set forth.

Cost of first plowing or breaking. All claim for plowing or breaking must specifically state that it was the first plowing or breaking of the soil, and the area and location of the land broken must be stated.

Cost of fencing necessary to protect the land for the purpose of reclamation, the length, kind, and location to be stated.

Cost of any permanent improvement essential to the reclamation of the land, provided its purpose or use is shown.

Be specific. Set forth in detail the nature, character, and purpose of all improvements, and state cost of each separately.

#### Sec. 125, U. S. Criminal Code.

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[4—076.]

Department of the Interior,

United States Land Office.....

**AFFIDAVIT IN CONTESTED CASES UNDER THE SWAMP-LAND GRANT.**

State of.....

County of.....

ss.

On this.....day of....., personally appeared before me, the undersigned, ....., in said State, ....., who, being by me duly sworn, deposes and says that he is well acquainted with the character of the soil in the following-described tract of land, to wit:.....

Section....., Township....., Range....., Meridian, in the district of lands subject to sale at....., in the State aforesaid, and being in the County of.....; that he has been over and examined the lines of said land, and the marks or designations on the corner posts or trees, and, from such examination, has ascertained and knows the greater part of each 40-acre tract or other smallest legal subdivision thereof to be dry and fit for cultivation, without artificial drainage or embankment, and free from such regular periodical overflow, either at the planting, growing, or harvesting season, as would materially injure or destroy a crop; that the growth on said land consists of.....

and that the growth on the adjoining tract consists of.....

And further, that such, he believes, was the character thereof on the 28th of September, 1850, the day on which the Swamp-Land Law was passed.

(Signature.)

Subscribed and sworn to before me on the day aforesaid.

Also appeared before me at the same time and place..... and....., who being duly sworn, depose and say that they are acquainted with the tract described in the above affidavit of ....., and know from personal knowledge and observation that the statements made therein are true.

Subscribed and sworn to before me on the day aforesaid.

(Official designation.)

The above affidavit may be made before the Register of the Land Office. Where that can not be conveniently done it may be made before any officer authorized to administer oaths, and in that case his official character must be certified under seal.

[4—081.]

Department of the Interior.

In the United States Land Office

At....., before the Register and Receiver.

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

Defendants.

Involving the.....  
Entry No. ....  
for .....

**AFFIDAVIT AND MOTION FOR COMMISSION TO TAKE DEPOSITIONS ORALLY AND NOT ON INTERROGATORIES.**

The undersigned, being duly sworn, on his oath says that he is a special agent of the General Land Office and the agent for the plaintiff in the above-



entitled case; that the following persons are material witnesses for the plaintiff in said case and reside as stated, to wit:

....., residence .....  
 (County.) ..... (State.)  
 ..... , residence .....  
 ..... , residence .....  
 that each of said witnesses.....

.....  
 and by reason thereof can not be procured to attend the trial of said case before the Register and Receiver at the local land office; that due service of notice of plaintiff's intention to take such depositions was had upon the defendants herein on....., 191., as more fully appear by the copy of such notice and return thereon herewith filed.

Wherefore, the undersigned, as agent for the plaintiff herein, moves that a commission issue to....., a..... authorized to administer oaths in the County of....., State of....., commanding him to take the depositions of the above-named witnesses and such other witnesses as may be produced on behalf of the plaintiff or of the defendants herein, orally by question and answer, to be by the said commissioner reduced to writing and properly returned as by law required at his office at....., at 10 a. m., on....., 191., and from day to day thereafter until taken.

.....  
 Subscribed and sworn to before me this.....day of....., 191.,  
 at.....

.....  
 (Official designation of officer.)

#### ORDER.—ALLOWANCE OF MOTION.

The foregoing affidavit and motion being considered, and the undersigned being advised, the said motion is this.....day of....., 191., allowed, and commission will issue.

.....  
 Register.

.....  
 Receiver.

[4—082.]

Department of the Interior.

In the United States Land Office,

At....., before the Register and Receiver.

THE UNITED STATES OF  
 AMERICA,

Plaintiff,  
 v.

Involving the.....  
 Entry No. ....  
 for .....

Defendants. }

#### COMMISSION TO TAKE DEPOSITION ORALLY AND NOT ON INTERROGATORIES.

To....., Greeting:

Know you, that you are hereby vested with full power and authority to conduct the hearing, take the testimony, and administer oaths to witnesses, at your office at.....on the..... day of....., 19...., at 10 a. m., and daily thereafter, as you shall from time to time said hearing adjourn, and until the same is complete as to all witnesses then before you produced on behalf of either the plaintiff or the defendant in the above-entitled case; that you should administer an oath to each of said witnesses before testifying, that he will tell the truth, the whole truth, and nothing but the truth; and that you will cause all questions addressed to said witness by counsel for either plaintiff or

defendants, together with the answer to such question, to be written out as given, and that the whole thereof for each witness you will cause to be read over to said witness and have said witness subscribe and swear thereto in the usual manner before said witness is discharged; that you will also cause to be written out in the record, at the time made, such motions and objections as respective counsel may make; \*that you are authorized to issue subpoenas for such witnesses as may be required by plaintiff or defendants and deliver the same to said plaintiff or defendants or their attorneys for service; that if any witness is duly subpoenaed at least five days prior to said hearing but fails to attend in pursuance of said subpoena, you will make due return thereon; that when the testimony of all witnesses offered on behalf of plaintiff and defendant shall have been taken you will attach thereto your certificate, stating that each said witness was duly sworn before testifying, that the testimony, question, and answer as written was read over to him before he subscribed the same and that he thereupon subscribed the same at the time and place therein mentioned; the said depositions and certificates, together with this certificate, you will then seal up, indorse the title of this cause upon the envelope, and the whole return by mail or express with all possible dispatch, to be used on the trial of the above-entitled case now pending before us. (Strict compliance with Rule of Practice 39, effective February 1, 1911, is required.)

.....  
Register.

.....  
Receiver.

\*Where testimony is to be taken under Rule 28 of Practice, this sentence should be stricken out.

#### RETURN OF COMMISSION.

According to the command of the within writ, I did, on the..... day of....., 19...., at 10 a. m., and daily thereafter until complete, at my office at....., execute the power and authority upon me conferred, in this, that I then and there called said hearing and that the following persons, to wit: .....

.....  
then and there appeared as witnesses before me in said cause and were by me each first duly sworn to tell the truth, the whole truth, and nothing but the truth in said action, and each of said witnesses being so sworn was examined and testified as in his said hereto-attached deposition does appear. and that all objections and motions made on behalf of plaintiff or defendant are set out in said depositions; that the within depositions are all the questions and answers, motions, and objections made at said hearing, and that I caused the same to be written out, and the whole when completed as to each witness was read over to such witness and by him so above sworn was subscribed under oath before discharged; that to each of said depositions I then attached by certificate, stating that the same was subscribed and sworn to by the said witness at the time and place above mentioned.

.....  
(Official designation of officer.)

Note.—If the officer designated to take the deposition has an official seal, his certificates must bear such seal; if he has no seal, a proper certificate of his official character, under seal, must accompany his return.

[4—083.]

#### STIPULATION.

.....	} Contest involving.....
.....	
Plaintiff.	
v.	
.....	
Defendant.	.....

It is hereby stipulated and agreed by and between the parties hereto that the oral testimony and proceedings taken and had at a hearing in the above-entitled case before.....on.....



19...., may be taken down in shorthand by..... stenographer, and by..... afterwards transcribed, and that the transcribed record, when sworn to by said stenographer as being a full, true, and correct record of all the testimony and proceedings taken and had at said hearing, shall be received and considered in all respects as if the witnesses testifying at said hearing had subscribed the testimony respectively given by them, the signatures of said witnesses being specifically waived.

(Applicable to Nebraska Only.)

[4-093.]

(Form approved by the Secretary of the Interior January 19, 1912.)

Department of the Interior.

ISOLATED OR DISCONNECTED TRACTS.

U. S. Land Office, ..... No. ....

Affidavit of Purchaser.

(Section 3, Act March 2, 1907.)

I, .....(.....), being first  
(Male or female.)

duly sworn, upon oath state that my postoffice address is.....; that I am the purchaser of....., Section....., Township....., Range....., Meridian, containing..... acres, in Nebraska, under the Act of June 27, 1906 (34 Stats., 517), as amended by section 3 of the Act of March 2, 1907 (34 Stats., 1224); that I..... (Insert statement that affiant is a native-born or naturalized citizen, or has declared intention to become such, as the case may be. Record evidence of naturalization or declaration of intention must be furnished.) citizen of the United States; that said purchase is made for my own use and benefit, and not, directly or indirectly, for the use and benefit of any other person; that I have not heretofore purchased under the provisions of said Act, either directly or indirectly, any lands, except.....

(Give description of lands heretofore purchased under this act, if any.)

(Sign plainly with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code, below.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by.....), and that said affidavit

(Give full name and post-office address.) was duly subscribed and sworn to before me, at my office, in....., within the (Town, county and State.)

land district, this..... day of....., 19....

(Official designation of officer.)

Section 125, U. S. Criminal Code.—Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

[4—095a.]

Department of the Interior.

In the United States Land Office.

At....., before the Register and Receiver.

THE UNITED STATES OF  
AMERICA,

Plaintiff,

v.

Defendant.

Involving the.....  
Entry No. ....  
for .....  
.....  
.....

## COMMISSION TO TAKE DEPOSITIONS ON INTERROGATORIES.

To....., Greeting:

Know you, that you are hereby appointed and vested with full power and authority to examine, under oath, on the interrogatories hereto attached, at your office at.....on the.....day of....., 191., at 10 a. m., and daily thereafter, until complete, the following persons, to wit: .....

.....and cause said interrogatories to be written out and the answers thereto to be inserted immediately underneath the respective questions; and the whole thereof for each witness you will cause to be read over to said witness, and you will the said witness swear and have him subscribe thereto in the usual manner before said witness is discharged; that you will attach your certificate to each said deposition stating that the same was subscribed and sworn to by the deponent at the time and place herein mentioned; that the said depositions and certificates, together with this commission and interrogatories, you will then seal up, indorse the title of this cause upon the envelope, and the whole return by mail or express with all possible dispatch, to be used on the trial of the above-entitled case now pending before us.

.....  
Register......  
Receiver.

## RETURN OF COMMISSION.

According to the command of the within writ, I did, on the.....day of....., 191., at 10 a. m., and daily until complete, at my office at....., execute the power and authority upon me conferred in this, that the said.....

.....then and there appeared before me and was by me each first duly sworn to tell the truth, the whole truth, and nothing but the truth in said action; and each of said witnesses being so sworn, I examined upon the interrogatories to him addressed as appended to said writ, and caused to be written out said interrogatories and the answers thereto to be written out and inserted immediately underneath the respective questions, and the whole when completed was read over to said witness and by him, so above sworn, subscribed under oath before discharged; that to each said deposition I then attached my certificate, stating that the same was subscribed and sworn to by the said witness at the time and place in said writ mentioned.

.....  
(Official designation of officer.)

Note.—If the officer designated to take the depositions has an official seal, his certificate must bear such seal; if he has no seal, a proper certificate of his official character, under seal, must accompany his return.



[4—100.]

Department of the Interior.

In the United States Land Office.

At....., before the Register and Receiver.

THE UNITED STATES OF  
AMERICA,

v.

Plaintiff,

Involving the.....  
Entry No. ....

for .....

Defendant.

## NOTICE TO TAKE DEPOSITIONS NOT ON INTERROGATORIES.

To.....Defendant:

You will take notice that the plaintiff in the above-entitled proceeding has this day filed an application to take depositions of.....

on the .....day of .....19...., between  
the hours of.....o'clock a. m. and.....o'clock p. m. of said day, at  
the office of....., a.....  
in.....County, in the State of.....

a copy of which application is hereto attached, and you are notified that, unless you show good and sufficient reasons to the contrary, a commission will be issued on said application at the expiration of ten days from the date of this notice, and said depositions will be taken at the time and place named herein and said taking will be continued from day to day, if necessary, until completed; and you will not thereafter be heard to question either the form or sufficiency of said application or the validity or effect of such commission.

THE UNITED STATES OF AMERICA,

By....., Agent.

State of.....

County of.....

ss.

....., a citizen of the United States and of the  
age of twenty-one years or over, being first duly sworn, states that he did,  
on the.....day of....., 19....,  
deliver to....., the same person named in the  
foregoing notice, a true copy of said notice, said delivery having been made  
to said.....at.....Subscribed and sworn to before me by.....  
this.. ..day of....., 19....

(Official designation of officer.)

Note.—The foregoing affidavit must be executed before an officer having and using a seal, or before the Register or Receiver of the United States District Land Office in which the proceeding in which the notice was issued is pending.

Affidavit.

[4—102b.]

To be used in all entries since August 30, 1890.

Department of the Interior.

United States Land Office,

....., 19....

I, ....., of.....  
applying to.....the following-described nonmineral public  
lands, to wit: .....

in Township....., of Range....., .....  
 .....M., do solemnly swear that since August 30, 1890, I  
 have not acquired title to, nor am I now claiming under any of the public  
 land laws of the United States other than the mineral land laws, an amount  
 of land which, together with the land above described, will exceed in the  
 aggregate three hundred and twenty acres, except.....  
 settled upon by me prior to August 30, 1890. Said settlement was commenced  
 ....., and my improvements thereon consist of  
 .....

(Sign plainly, with full Christian name.)

Subscribed and sworn to before me this.....day of.....,  
 19...., at my office in.....County, in.....

#### [4—109b.]

Application for repayment of purchase moneys and commissions.

(Sec. 1, Act of March 26, 1908.)

Department of the Interior,

General Land Office,

The Commissioner of the General Land Office.

Sir: I hereby make application for the return of the purchase money  
 and commissions paid with.....Application, No.....,  
 (Kind.)

for the.....  
 Section....., Township....., Range....., .....  
 Meridian, as per Receiver's Receipt,\* No. ...., issued at .....  
 dated....., which is surrendered herewith; and on oath  
 declare that I am the same (or legal representative of the) person who made  
 said payment, and that there was no fraud or attempted fraud in connection  
 with the effort to obtain title to the land described. ....

(Signature of applicant.)

(Post-office address.)

State of ....., County of .....

Subscribed and sworn to before me this ..... day of .....

(Official designation.)

\* If the receipt has been lost or destroyed, so state.

The above affidavit may be made before the register or receiver or any  
 officer authorized to administer oaths. When made before a justice of the  
 peace a certificate of official character is required.

#### [4—109b.]

APPLICATION FOR REPAYMENT OF EXCESS PAYMENTS.

(Sec. 2, Act of March 26, 1908.)

Department of the Interior.

General Land Office.

The Commissioner of the General Land Office.

Sir: I hereby make application for the return of the amount paid in excess  
 of the lawful requirements on ..... Entry, No. ...., for the ..... Section  
 (Kind.)  
 ....., Township ....., Range ....., ..... Meridian, as per Receiver's



Receipt, No. ...., issued at ....., dated .....; and on oath declare that I am the same (or legal representative of the) person who made said payment.

.....  
(Signature of applicant.)

.....  
(Post-office address.)

State of ....., County of .....

Subscribed and sworn to before me this ..... day of .....

.....  
(Official designation.)

The above affidavit may be made before the register or receiver or any officer authorized to administer oaths. When made before a justice of the peace a certificate of official character is required.

[4—187.]

Department of the Interior,  
United States Land Office.

.....  
(Place.)

.....  
(Date.)

The Recorder of Deeds,

Sir: For the information of yourself and the public, in connection with the official records of your county, you are advised that final Register's Certificate, No. ...., issued ..... to ..... for the following described land:  
(Date.)

..... Section ....., Township ....., Range ....., Meridian, was finally canceled by decision of the General Land Office, dated .....

Very respectfully,

....., Register.

[4—189.]

Department of the Interior,  
United States Land Office .....

Serial No. ....

Receipt No. ....

# CERTIFICATE.

....., 19..  
(Date.)

It is hereby certified that, in pursuance of law, ....., residing at ....., in ..... County, State of ....., on this day purchased of the Register of this office the ....., Section ....., Township ....., Range ....., Meridian, ....., containing ..... acres, at the rate of ..... dollar.. and ..... cents per acre, amounting to ..... dollars and ..... cents, for which the said ..... has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this Certificate to the Commissioner of the General Land Office, the said ..... shall be entitled to receive a patent for the lot above described.

....., Register.

Note.—A duplicate of this certificate is issued to the claimant as notice of the allowance of the entry by the Register and Receiver.

The original is forwarded to the General Land Office, with the entry papers, for approval by the Commissioner of the General Land Office and issuance of patent.

The duplicate copy forwarded to the claimant should be held until notice of issuance of patent is received.

In all correspondence concerning the entry in connection with which this certificate is issued, refer to the name of the Land Office and the Serial Number noted hereon.

Approved .....

By ....., Division .....

[4—196.]

Department of the Interior.

United States Land Office .....

Serial No. ....

Receipt No. ....

## CERTIFICATE.

Homestead.

(Date.)

....., 19..

It is hereby certified that, pursuant to the provisions of Section 2291, Revised Statutes of the United States, ..... has made payment in full for ....., Section ....., Township ....., Range ....., ..... Meridian, ....., containing ..... acres.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said ..... shall be entitled to receive a patent for the lot above described.

....., Register.

Note.—A duplicate of this certificate is issued to the claimant as notice of the allowance of the entry by the Register and Receiver.

The original is forwarded to the General Land Office, with the entry papers, for approval by the Commissioner of the General Land Office and issuance of patent.

The duplicate copy forwarded to the claimant should be held until notice of issuance of patent is received.

In all correspondence concerning the entry in connection with which this certificate issued, refer to the name of the Land Office and the Serial Number noted hereon.

Approved .....

By ....., Division .....

[4—197.]

Additional Entry under Section 2306 of the Revised Statutes of the United States.

## CERTIFICATE.

Land Office, .....

....., 190..

Final Certificate No. ....

Application No. ....

It is hereby certified that, pursuant to the provisions of Section 2306 of the Revised Statutes of the United States, ..... has paid the fee and commissions, and made entry of the ..... of Section ....., of Township ....., of Range ....., containing ..... acres, which added to the quantity embraced in his original homestead No. ...., on which he has made final proof, as per certificate No. ...., does not exceed one hundred and sixty acres.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said ..... shall be entitled to a patent for the tract of land above described.

....., Register.

[Form 4—200.]

See Desert Land, Final Proof.

[4—201.]

## REGISTER'S FINAL CERTIFICATE OF ENTRY.

Department of the Interior,

United States Land Office,

Mineral Entry No. ....

Lot No. ....

at.....

....., 190..

It is hereby certified that in pursuance of the provisions of the Revised Statutes of the United States, Chapter VI, Title XXXII, and legislation supplemental thereto ....., whose post-office address is ....., on this day purchased that Mining Claim known as the ....., Section ....., in Township No. ...., of Range No. ...., ..... Meridian, designated as



Lot.. No. ...., said Lot No. .... extending ..... feet in length along said ..... vein or lode, expressly excepting and excluding from said purchase all that portion of the ground embraced in mining claim.. or survey.. designated as Lot.. No. ...., and also that portion of any vein or lode the top or apex of which lies inside of said excluded ground; said Lode ..... claim, as entered, embracing ..... acres, and said Mill-Site claim ..... acres, in the ..... Mining District in the County of ..... and ..... of ..... as shown by the plat and field notes of survey thereof, for which the said part.. first above named this day made payment to the Receiver in full, amounting to the sum of ..... dollars.

Now, therefore, be it known that upon the presentation of this certificate to the Commissioner of the General Land Office, together with the plat and field notes of survey of said claim and the proofs required by law, a patent shall issue thereupon to the said ..... if all be found regular.

.....  
Register.

[4—219a.]

### REGISTER'S FINAL COAL CERTIFICATE OF ENTRY.

Coal Entry No. ....

Land Office at .....  
....., 19..

It is hereby certified that in pursuance of the Revised Statutes of the United States relating to Coal Lands ....., residing at ....., in ..... County, State of ....., on this day purchased of the Register of this office the ..... of Section No. ...., in Township No. ...., of Range No. ...., of the ..... Principal Meridian, ..... containing ..... acres, at the rate of ..... dollars per acre, amounting to ..... dollars and ..... cents, for which the said ..... ha.. made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said ..... shall be entitled to receive a patent for the land above described if all be found regular.  
....., Register.

[4—235.]

Scrip Certificate.

Registers and Receivers.

### SIoux HALF BREED RESERVE AT LAKE PEPIN.

(Act of July 17, 1854.)

United States Land Office,

....., 189..  
We hereby certify that the attached Half Breed Scrip No. ...., Letter ..... was on this day received at this office from ....., of ..... County, State of Minnesota.

....., Register.  
....., Receiver.

I, ....., ..... County, State of Minnesota, hereby apply to locate, and do locate, the tract of land as designated by the plats of the Government survey, to-wit: ....., containing ..... acres, in the district of lands subject to sale at the Land Office at ....., in satisfaction of the attached Scrip No. ...., Letter ....., issued under the Act of July 17, 1854.

Witness my hand and seal, this ..... day of ....., 189..

Attest:

....., Register.  
....., Receiver.  
.....

United States Land Office,

....., 189..  
We hereby certify that the annexed Scrip No. ...., Letter ....., has this day been located on the tract of land described within, containing ..... acres, agreeable to Act of July 17, 1854, and by the party duly authorized to make such location.

....., Register.  
....., Receiver.

[4—252f.]

[This letter of transmission must invariably be used in forwarding the "complete record" in a mineral application or entry, as directed by paragraph 73 of the Mining Circular. Too much care can not be exercised to see that the schedule is correctly and comprehensibly filled out. Each entry should be forwarded by separate letter.]

Department of the Interior,  
United States Land Office,

....., 191..

The Commissioner of the General Land Office, Washington, D. C.

Sir: We have the honor to transmit herewith a complete record in Mineral Application ....., Entry No. ...., for the ..... claim, as follows:

- ..... Application for Patent.
- ..... Field Notes, including Surveyor-General's certificate of improvements.
- ..... Plat, Survey No. ....
- ..... Copy of Location Certificate.
- ..... Abstract of Title.
- ..... Affidavits of Citizenship, or Articles of Incorporation.
- ..... Power of Attorney.
- ..... Surveyor-General's Certificate of Improvements (not included in field notes).
- ..... Proof of Improvements—placer, legal subdivision.
- ..... Mineral Surveyor's Report on Placers (approved by United States Surveyor-General).
- ..... Proof that no known vein exists.
- ..... Affidavit, nonmineral character of mill site.
- ..... Affidavit, use or occupancy of mill site.
- ..... Proof of Posting Plat and Notice on the Claim.
- ..... Proof of Continuous Posting during period of publication.
- ..... Certificate of Posting Plat and Notice in the United States Land Office.
- ..... Proof of Publication.
- ..... Agreement of Publisher.
- ..... Adverse Claims .....  
(Give serial No. of each adverse claim; if none, so state.)
- ..... Court Certificates.
- ..... Protests.
- ..... Report of Special Agent.
- ..... Application to purchase.
- ..... Sworn Statement of all Charges and Fees Paid.
- ..... Register's Final Certificate.
- .....
- .....

..... Inclosures.

....., Register.  
....., Receiver.

[4—274.]

Form approved by the Secretary of the Interior November 12, 1907.

Department of the Interior.

DESERT-LAND ENTRY.

U. S. Land Office, ....., No. ....

Declaration of Applicant.

I, ..... (.....) a resident of  
(Give full Christian name.) (Male or female.)  
....., do solemnly swear that I .....  
(Town, county and State.)

(Applicant must state whether native born, naturalized, or has filed declaration of intention to become a citizen. If not native born, certified copy of naturalization or declaration of intention, as case may be, must be filed with this affidavit.)  
citizen of the United States, of the age of ..... years, and by occupation a



.....; that my post-office address is .....; that I intend to  
 (If a city, street and number must be given.)  
 reclaim a tract of desert land not exceeding one-half section, or 320 acres, by  
 conducting water upon the same within four years from date of entry, in  
 manner as required by the Act of Congress approved March 3, 1877, entitled  
 "An Act to provide for the sale of desert lands in certain States and Terri-  
 tories," as amended by the Act of March 3, 1891. The land which I intend  
 to reclaim is desert land and is described as follows: .....

(A map must be furnished which shall exhibit a plan showing the mode of con-  
 templated irrigation as required by section 4 of said act. When entry is made on unsur-  
 veyed land the plan of contemplated irrigation must be indicated on a correct diagram  
 showing by metes and bounds the land applied for. When practicable, the dimensions  
 of said map or diagram should be  $8\frac{1}{2} \times 14$  or  $14 \times 17$  inches.)

....., Section ....., Township ....., Range ....., Meridian, con-  
 taining ..... acres, situated in ....., within the ..... land district.  
 (County and State.)

I further depose and declare that I have made no other declaration for  
 desert lands nor any other entry under the provisions of said act, nor have I  
 had assigned to me any lands entered under said act; that since August 30,  
 1890, I have not entered and acquired title to, nor am I now claiming, under  
 an entry made under any of the nonmineral public-land laws, an amount of land  
 which, together with the land now applied for, will exceed in the aggregate  
 320 acres; that the land above described borders on .....

(State what stream or body of water and describe the same.)  
 and that there is through or upon said land .....

(Name and describe all water courses, springs, or other bodies of water.)  
 that said land is not naturally irrigated or watered, nor overflowed at any  
 season of the year by the foregoing or any other natural stream, spring, or  
 other body of water; that I expect to obtain my water supply to irrigate said  
 land from .....; that the character of the soil is .....; that said land will  
 not, without artificial irrigation, produce an agricultural crop of any kind in  
 amount reasonably remunerative, and that it will not, when unfed by grazing  
 animals, produce native grasses sufficient in quantity to make an ordinary  
 crop of hay in usual seasons; that there are no trees on said land; that the  
 same is essentially dry and arid land, wholly unfit for cultivation without  
 artificial irrigation; that said land can not be successfully cultivated without  
 being reclaimed by conducting water thereon; that it is a fact well known,  
 patent, and notorious that the same will not, in its natural condition, produce  
 any crop; that no portion of said land has ever been reclaimed by conducting  
 water thereon, and there are no lands in the vicinity of this tract that are  
 occupied by settlers and cultivated without artificial irrigation. And I further  
 declare that I have personally examined every legal subdivision of the said  
 land and there is not, to my knowledge, within the limits thereof, any vein or  
 lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin,  
 or copper, or any deposit of coal; that there is not, within the limits of said  
 land, to my knowledge, any placer, cement, gravel, or other valuable mineral  
 deposit, salt springs, or deposits of salt; that no portion of said land is claimed  
 for mining purposes under the local customs or rules of miners, or otherwise;  
 that no portion of said land is worked for mineral during any part of the year  
 by any person or persons; that said land is essentially nonmineral land, and that  
 my declaration therefor is not made for the purpose of fraudulently obtaining  
 title to mineral land, timber land, or agricultural land, but for the purpose of  
 faithfully reclaiming the land above described by conducting water thereon,  
 and that the land is not occupied and improved by any Indian and is unoccu-  
 pied, unimproved, and unappropriated by any person claiming the same other  
 than myself (except .....).

.....  
 (Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be pun-  
 ished as provided by law for such offense. (See Sec. 5392, R. S.)

I hereby certify that the foregoing affidavit was read to or by affiant in  
 my presence before affiant affixed signature thereto; that affiant is to me  
 personally known (or has been satisfactorily identified before me by .....);

(Give full name and post-office address.)  
 that I verily believe affiant to be a qualified applicant and the identical person  
 hereinbefore described; and that said affidavit was duly subscribed and sworn  
 to before me, at my office, in ....., within the ..... land  
 (Town.)

(County and State.)

district, this ..... day of ....., 19..

.....  
(Official designation of officer.)

Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

AFFIDAVIT OF WITNESS.

We, ....., of ....., ..... years of age, and by  
(Give full Christian name.)  
(Give full post-office address.)  
occupation ....., and ....., of ....., .....  
(Give full Christian name.) (Give full post-office address.)

years of age, and by occupation ....., do solemnly swear that we are well acquainted with the character of each and every legal subdivision or portion of the land described in the foregoing declaration, which said declaration has been read to us; that we became acquainted with said land by personal and careful examination of each and every legal subdivision or portion thereof; that we have been acquainted with it for ..... and ..... years, respectively; that our knowledge of the land is such as to enable us to testify understandingly concerning it; that same is desert, nonmineral land; that each and every statement made by applicant in the foregoing declaration as to the condition, character, and situation of said land is true of our own personal knowledge; and we further state that we are not interested, in any way or manner, directly or indirectly, present or prospective, in the application or declaration in support of which this affidavit is made, nor in the land itself, nor in any title thereto which may be acquired by said applicant or any other person.

.....  
(Sign here with full Christian name.)

.....  
(Sign here with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S., preceding.)

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by .....  
.....); that I verily believe affiants to be credible witnesses and the identical persons hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in .....,  
(Town.)

....., within the ..... land district, this ..... day of  
(County and State.)  
....., 19..

.....  
(Official designation of officer.)

United States Land Office at .....,

....., 19..

It is hereby certified that, under the provisions of the Act of Congress approved March 3, 1877, entitled "An Act to provide for the sale of desert lands in certain States and Territories," as amended by the Act of March 3, 1891, the foregoing declaration of intention to reclaim the lands hereinbefore



described has this day been filed by the above-named declarant; that the evidence shows that said tract is desert land as defined in the second section of said Act; and that declarant has paid to the Receiver the sum of ..... dollars, being at the rate of twenty-five cents per acre for the said lands.

Register.

\$.....

Receiver.

[4—274c.]

Department of the Interior.

### DESERT-LAND ENTRY.

U. S. Land Office, ....., No. ....

#### Affidavit of Assignee.

(This affidavit must be sworn to before the register or receiver of the land district in which the land is located, or before a United States Commissioner, or commissioner of a court exercising Federal jurisdiction in the Territory, or before a judge or clerk of any court of record in the country or land district in which the land is situated. If the affidavit is made out of the county in which the land is situated it must be shown by affidavit that it was made before the nearest or most accessible qualified officer in the land district.)

I, ....., of ....., claiming to be the assignee of ....., who made Desert-Land Entry No. ...., on the ..... day of ....., 19.., at the district land office at ....., do solemnly swear that I, .....

(Affiant must state whether native born, naturalized, or has filed declaration of intention to become a citizen. If not native born, certified copy of naturalization or declaration of intention, as the case may be, must be filed with this affidavit.)

citizen of the United States, of the age of ..... years, and a legal resident of the State of .....; that the said ..... did, by virtue of a deed or instrument of writing executed on the ..... day ....., 19.., a certified copy of which is hereto attached, transfer to me his right under said entry to the ..... Section ....., Township ....., Range ....., ..... Meridian; that I have not heretofore made entry under the desert-land laws, nor has any entry, either in whole or in part, been assigned to me, except .....

(If the assignee has made a desert entry or held one by assignment, and claims the benefits of the act of March 26, 1908 (35 Stat., 48), or the act of February 3, 1911 (36 Stat., 896), he must describe such entry, and state when same was abandoned). and that (excepting lands upon which I had settled or of which I had made entry prior to August 30, 1890) I have not, since August 30, 1890, acquired title to, nor am I now claiming under the agricultural land laws, a quantity of land which, together with that herein described as assigned to me, will exceed in the aggregate 320 acres, the only entries of any kind made by or assigned to me since August 30, 1890, being .....

(Here describe entries made since August 30, 1890.)

(Sign here full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125 U. S. Criminal Code.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....);

(Give full name and post-office address.)

that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ....., within the

(Town.)

(County and State.)

... .. land district, this ..... day of ....., 19..

(Official designation of officer.)

#### United States Criminal Code.—Chap. 6.

Sec. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify

truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years. (Act, March 4, 1909. 35 Stat., 1111.)

[Form 4—348.]

APPLICATION TO MAKE PROOF.

See page 220.

[4—348a.]

(For use in Homestead, Desert Land, and Timber or Stone Entries.)

NOTICE FOR PUBLICATION.

(Register.)

Department of the Interior,

U. S. Land Office at ....., 19..

Notice is hereby given that ....., of ....., who, on ....., 19.., made ....., No. ...., for ....., Section ....., Town-

(Kind of application or entry.)

ship ....., Range ....., Meridian, has filed notice of intention to make Final ....., Proof, to establish

(If homestead, insert "five year" or "commutation," as the case may be.) claim to the land above described, before ....., at .....,

(Name of officer.)

on the ..... day of ....., 19..

Claimant names as witnesses:

....., of .....  
 ..... of .....  
 ..... of .....  
 ..... of .....

Register.

CERTIFICATE AS TO POSTING OF NOTICE.

I hereby certify that the above notice, or copy thereof, was by me posted in a conspicuous place in my office for a period of ..... days, I having first posted said notice on the ..... day of ....., 19..

Register.

[4—348b.]

(For use in Homestead, Desert Land, and Timber or Stone Entries.)

NOTICE FOR PUBLICATION.

(Publisher.)

Department of the Interior,

U. S. Land Office at ....., 19..

Notice is hereby given that ....., of ....., who, on ....., 19.., made ....., No. ...., for ....., Section ....., Township ....., Range ....., Meridian, has filed notice of intention to make Final ....., Proof, to establish claim to

(Kind of application or entry.)

(If homestead, insert "five year" or "commutation," as the case may be.) the land above described, before ....., at ....., on the

(Name of officer.)

..... day of ....., 19..

Claimant names as witnesses:

....., of .....  
 ..... of .....  
 ..... of .....  
 ..... of .....

Register.



## AFFIDAVIT OF PUBLICATION.

(~~For~~ Publisher: Return this form to the Register at the end of the period of publication, with the "Affidavit of Publication" properly executed.)  
(Attach clipping here.)

I, ....., of the ....., published  
(Publisher or foreman.) (Name of newspaper.)  
....., at ....., do solemnly swear that a  
(Daily or weekly.) (Place.)  
copy of the above notice, as per clipping attached, was published  
..... in the regular and entire issue of said newspaper, and not  
(Daily or weekly.)  
in any supplement thereof, for ..... consecutive ....., commencing with  
the issue dated ....., 19.., and ending with the issue dated ....., 19..

(Signature.)

Subscribed and sworn to before me this ..... day of ....., 19..

(Official designation.)

[4—348c.]

(Form approved by the Secretary of the Interior, January 19, 1912.)

## NOTICE FOR PUBLICATION—ISOLATED TRACT.

(Register.)

Public Land Sale.

Department of the Interior,

U. S. Land Office at ....., 19..

Notice is hereby given that, as directed by the Commissioner of the General Land Office, under provisions of Act of Congress approved June 27, 1906 (34 Stats., 517), pursuant to the application of ....., Serial No. ...., we will offer at public sale, to the highest bidder, but at not less than \$..... per acre, at ..... o'clock ..... M., on the ..... day of ....., at this office, the following tract of land: .....

Any persons claiming adversely the above-described land are advised to file their claims, or objections, on or before the time designated for sale.

....., Register.  
....., Receiver.

## CERTIFICATE AS TO POSTING OF NOTICE.

....., 19..

I hereby certify that the above notice, or a copy thereof, was by me posted in a conspicuous place in my office for a period of ..... days, I having first posted said notice on the ..... day of ....., 19..

Register.

[4—348d.]

(Form approved by the Secretary of the Interior, January 19, 1912.)

## NOTICE FOR PUBLICATION—ISOLATED TRACT.

(Publisher.)

Public Land Sale.

Department of the Interior,

U. S. Land Office at ....., 19..

Notice is hereby given that, as directed by the Commissioner of the General Land Office, under provisions of Act of Congress approved June 27, 1906 (34 Stats., 517), pursuant to the application of ....., Serial No. ...., we will offer at public sale, to the highest bidder, but at not less than \$..... per acre, at ..... o'clock ..... M., on the ..... day of ....., at this office, the following tract of land: .....

Any persons claiming adversely the above-described land are advised to file their claims, or objections, on or before the time designated for sale.

....., Register.  
....., Receiver.

### AFFIDAVIT OF PUBLICATION.

(~~2~~ Publisher: Return this form to the Register at the end of the period of publication, with the "Affidavit of Publication" properly executed.)  
(Attach clipping here.)

I, ....., of the ....., published  
(Publisher or foreman.) (Name of newspaper.)  
..... at ....., do solemnly swear that a copy of the  
(Daily or weekly.) (Place.)  
above notice, as per clipping attached, was published ..... in  
(Daily or weekly.)  
the regular and entire issue of said newspaper, and not in any supplement  
thereof, for ..... consecutive ....., commencing with the issue dated  
....., 191., and ending with the issued dated ....., 191..

.....  
(Signature.)

Subscribed and sworn to before me this ..... day of ....., 191..

.....  
(Official designation.)

[4—348e.]

### NOTICE FOR PUBLICATION.

(Register.)

Department of the Interior,

U. S. Land Office at .....,

....., 19..  
Notice is hereby given that ....., whose post-office address is  
....., did, on the ..... day of ....., 19., file in this office Sworn  
Statement and Application, No. ...., to purchase the ....., Section .....,  
Township ....., Range ....., ..... Meridian, and the timber thereon,  
under the provisions of the Act of June 3, 1878, and acts amendatory, known  
as the "Timber and Stone Law," at such value as might be fixed by appraisement, and that, pursuant to such application, the land and timber thereon  
have been appraised, ..... the timber estimated ..... board  
(See note below.)

feet at \$. .... per M, and the land \$. ....; that said applicant will offer  
final proof in support of his application and sworn statement on the ..... day  
of ....., 19., before ....., at .....

(Name of officer.)

Any person is at liberty to protest this purchase before entry, or initiate  
a contest at any time before patent issues, by filing a corroborated affidavit in  
this office, alleging facts which would defeat the entry.

.....  
Register.

### CERTIFICATE AS TO POSTING OF NOTICE.

....., 19..  
I hereby certify that the above notice, or copy thereof, was by me posted  
in a conspicuous place in my office for a period of ..... days, I having first  
posted said notice on the ..... day of ....., 19..  
.....

Register.

Note.—When notice is issued under Section 19, Departmental Regulations  
of November 30, 1908, the Register will cross out the word "appraised." and  
insert "estimated and valued by the applicant, —,"



(Applicable to Nebraska only.)

[4—348h.]

(Form approved by the Secretary of the Interior, January 19, 1912.)

## NOTICE FOR PUBLICATION—ISOLATED TRACT.

(Publisher.)

Public Land Sale.

Department of the Interior,

U. S. Land Office at ....., 19..

Notice is hereby given that, as directed by the Commissioner of the General Land Office, under provisions of Acts of Congress approved June 27, 1906 (34 Stats., 517), and March 2, 1907 (34 Stats., 1224), pursuant to the application of ....., Serial No. ...., we will offer at public sale, to the highest bidder, but at not less than \$..... per acre, at ..... o'clock ..... m., on the ..... day of ..... next, at this office, the following tract of land: .....

Any persons claiming adversely the above-described land are advised to file their claims, or objections, on or before the time designated for sale.

....., Register.

....., Receiver.

## AFFIDAVIT OF PUBLICATION.

(§ Publisher: Return this form to the Register at the end of the period of publication, with the "Affidavit of Publication" properly executed.)

I, ....., of the ....., published  
(Publisher or foreman.) (Name of newspaper.)  
....., at ....., do solemnly swear that a copy of  
(Daily or weekly.) (Place.)  
the above notice, as per clipping attached, was published .....

(Daily or weekly.)  
in the regular and entire issue of said newspaper, and not in any supplement thereof, for ..... consecutive ....., commencing with the issue dated ....., 191., and ending with the issue dated ....., 191..

.....  
(Signature.)

Subscribed and sworn to before me this ..... day of ....., 191..

.....  
(Official designation.)

[4—350.]

No. ....

## COAL LANDS.

Declaratory Statement under Sec. 2348, R. S.

Department of the Interior,

United States Land Office at ....., 19..

I, ....., of ....., do hereby declare my intention to purchase, in the exercise of a preference right, under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the ..... of Section ....., in Township ....., of Range ....., in the district of the lands subject to sale at the district land office at ....., and I do solemnly swear that I am ..... years of age and a citizen of the United States (or have declared my intention to become a citizen of the United States); that I have never, either as an individual or as a member of an association, held (except ..... ) or purchased any coal lands under the aforesaid provisions of the Revised Statutes; that I entered into possession of said tract on, and have remained in actual possession continuously since, the ..... day of ....., 19.., during which period I diligently prosecuted work for the development of coal; that on the ..... day of ....., 19.., I opened a valuable mine of coal on the land, which I improved as such; that in such labor and improvements I have expended the sum of ..... dol-

lars, the labor and improvements being as follows: (Here state how the mine was opened and describe the nature and character of the improvements.)....., and I do furthermore solemnly swear that I am well acquainted with the character of said described land and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

\* .....  
(Sign full Christian name.)

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by .....), and that I verily believe him to be a qualified person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in ....., within the ..... land district, on this ..... day of ....., 19..

.....  
(Official designation of officer.)

\* This affidavit must be personally verified by declarant before the register or receiver.

[4—357.]

(Form approved by the Secretary of the Interior, April 18, 1910.)  
Department of the Interior.

#### NOTICE OF RIGHT OF ELECTION.

In cases where final proof has not been submitted.

(Act of March 3, 1909.)

U. S. Land Office, ....., No. ....  
....., 19..

Sir: Your attention is directed to the provisions of the Act of March 3, 1909, printed on the back hereof, and you are hereby notified that subsequently to your ..... No. ...., made ....., 19.., for  
(Insert kind of entry, location, or selection.)

....., Section ....., Township ....., Range ....., Meridian, said tract was classified, claimed, or reported as being valuable for coal; also that at the time of applying for notice to submit final proof you must state in writing whether you elect to receive a patent which shall contain a reservation to the United States of all coal in said land, and the right of the United States, or any person or persons authorized by it, to prospect for, mine, and remove coal from the same, in accordance with the conditions and limitations imposed by said Act. Should you elect to receive such patent, no further inquiry will be made respecting the coal character of the land, and patent will issue, with the statutory reservation, provided satisfactory proof of your good faith and of compliance on your part with the provisions of the law under which you claim, be submitted. In the event you decline to elect to receive such patent, evidence will be received at the time of making final proof with a view to determining whether the land is chiefly valuable for coal, and, the proof being in other respects regular and satisfactory, you will be entitled to receive patent without reservation unless at the time of the hearing on final proof it shall be shown that the land is chiefly valuable for coal.

Respectfully,

....., Register.  
....., Receiver.

#### Election to Receive Patent Upon Nonmineral Claim Exclusive of Any Deposits of Coal in the Land.

I, ....., of ....., County of ....., State of ....., who on ....., 19.., made .....  
(Insert kind of location, selection, or entry.)  
No. ...., for the ....., Section ....., Township ....., Range ....., Meridian, do hereby elect, upon submission of satisfactory proof



of compliance with law under which my claim was initiated, to receive patent for the lands, which patent shall reserve to the United States all of the coal in said lands with the right of the United States, or any person authorized by it, to prospect for, mine, and remove the coal from same in accordance with the conditions and limitations of the Act of March 3, 1909 (35 Stat., 844).

In accordance with above election, I hereby authorize the proper officer or officers of the United States, upon submission of satisfactory final proof upon my location, selection, or entry, to issue final certificate or other paper as basis for patent, containing the reservation of the coal hereinbefore described, and to issue patent in accordance therewith.

The foregoing election was, in our presence, read to or by the said .....  
(Cross out "to or" or "or by," as case may be.)  
....., who is to each of us personally known, and we, the undersigned, have this day hereunto set our hands as witnesses of the execution thereof.

Dated this ..... day of ....., 19.., at ....., State of .....

Name ..... Residence .....

Name ..... Residence .....

Note.—The attention of parties in interest is directed to the provisions of the Act of March 3, 1909, copy of which is printed below.  
[35 Stat., 844.]

An Act for the protection of the surface rights of entrymen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: Provided, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit: Provided further, That nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

Approved March 3, 1909.

[4—358.]

Local officers will invariably make a press copy hereof to be filed with the case. (Form approved by the Acting Secretary of the Interior, September 19, 1910.)

Department of the Interior,  
United States Land Office.

.....  
(Place.)

.....  
(Date.)

Serial No. ....

#### NOTICE TO NONMINERAL CLAIMANTS.

(Act of June 22, 1910 (36 Stat., 583)—An Act to provide for agricultural entries on coal lands.)

.....

Sir: You are hereby notified that the land embraced in your entry, selec-

tion, or location,\* No. ...., made ....., 19.., under the ..... laws, for  
 ....., Section ....., Township ....., Range .....,  
 (Describe land by proper legal subdivisions.)  
 ....., Meridian, was withdrawn ....., 19.., by departmental order of  
 ....., 19.., Executive order of ....., 19.., and classified ....., 19.., as  
 coal land,\* and, therefore, is not subject to disposition under your said entry,  
 selection, or location, except under the provisions of the Act of June 22, 1910  
 (36 Stat., 583), specially excepting and reserving to the United States all the  
 coal in said land and the right to prospect for, mine, and remove the same,  
 upon compliance with the conditions prescribed by said Act.

If, however, you have good and sufficient reasons for believing that the  
 land is not coal in character, you will be allowed—thirty days from notice  
 hereof—at any time prior to the submission of final proof\* within which to  
 submit evidence, preferably the sworn statements of experts or practical miners,  
 that the land is in fact noncoal in character, together with an application by  
 you—for classification as noncoal—for reclassification.\*

In the event of your failure to take action as aforesaid, and the land has  
 not in the meantime been restored to entry under the general land laws, a  
 patent will issue on your said entry, selection, or location, containing the fol-  
 lowing reservation, to-wit:

Excepting and reserving, however, to the United States all the coal in the  
 lands so patented, and to it, or persons authorized by it, the right to prospect  
 for, mine, and remove the coal from the same upon compliance with the condi-  
 tions and subject to the provisions and limitations of the Act of June 22, 1910  
 (36 Stat., 583): Provided, you have complied in good faith with all the  
 requirements of the law in such cases made and provided.

....., Register.  
 ..... , Receiver.

\*Register will strike out all inapplicable portions of blank, to meet the  
 facts in each particular case.

Note.—Your attention is directed to the provisions of the Act of June 22,  
 1910. (See Act June 22, 1910, 36 Stat., 583.)

[4—360.]

No. ....

## COAL LANDS.

### Affidavit.

(Distance from completed railroad.)

....., SS.:

I, ....., having made application to purchase, under the Statutes  
 of the United States relating to the sale of coal lands, the following-described  
 tracts: \* ....., do solemnly swear that none of said described  
 smallest legal subdivisions are situated wholly, or in greater part, within fifteen  
 miles of a completed railroad actually constructed, equipped, and operated—  
 calculated from the point on such railroad nearest each smallest legal sub-  
 division respectively.

† .....  
 (Sign full Christian name.)

Subscribed and sworn to before me, a ....., on this ..... day of .....,  
 19.., and I hereby certify that affiant is to me personally known (or has been  
 satisfactorily identified before me by .....,) and I verily believe him to be a  
 qualified person and the person he represents himself to be.

.....  
 (Official designation of officer.)

....., SS.:

Before me, the subscriber, personally appeared ..... and .....,  
 who, being duly sworn, say that they reside at ..... and are acquainted  
 with the lands described in the foregoing affidavit, and know, of their own  
 knowledge, the facts stated in the affidavit, as to the distance of the several  
 tracts from a completed railroad, to be true, and that they have no interest  
 in the lands.

Witnesses:

.....  
 .....

\* Describe land by smallest legal subdivisions.

† This affidavit must be personally verified by applicant.



Subscribed and sworn to before me this ..... day of ....., 19.., and I certify that the foregoing affidavit was read to the above-named witnesses previous to their names being subscribed thereto, and that deponents are credible witnesses.

.....  
(Official designation of officer.)

[4—363.]

Department of the Interior,  
United States Land Office.

[4—365.]

Notice for Publication.

COAL ENTRY.

(Sec. 2347, R. S.)

For form see page 286.

....., 19..

.....  
.....  
.....  
Sir: You are advised that on ....., 19.., there was filed in this office, during the statutory period, provided therefor, the adverse claim of ..... for ..... claim, against the issuing of patent to ..... for ..... mining claim.

Now, therefore, under Section 2326, Revised Statutes of the United States, and paragraph 83 of the regulations thereunder, approved July 26, 1901, "the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits."

Very respectfully,

.....  
Register.

[4—366.]

Notice for Publication.

COAL ENTRY.

(Secs. 2348-52, R. S.)

For form see page 178.

[Form 4—369.]

FINAL PROOF TESTIMONEY OF CLAIMANT.

See page 141.

[Form 4—370.]

APPLICATION AND SWORN STATEMENT.

See pages 275, 575. Also other form under this Act.

[4—372a.]

(Form approved by the Secretary of the Interior, May 29, 1908.)

Department of the Interior.

DESERT-LAND ENTRY.

U. S. Land Office, ....., No. ....

Final Proof.

Testimony of Claimant.

Question 1. State your name, age, residence, occupation, and post-office address.

Answer. ....

Question 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born, and of what State or Territory are you now a resident citizen?

(If foreign born, certified copy of naturalization certificate must be filed with this proof.)

Answer. ....

Question 3. Give the number and date of the Desert-Land Entry, and describe the land for which this proof is made.

Answer. ....

Question 4. State its situation, the character of the soil, its proximity to water, and what natural streams, springs, or bodies of water are upon or pass through or adjoin it. And if any, do the streams or springs afford natural irrigation? State whether paying crops of any kind have been raised on any part of such land without artificial irrigation.

Answer. ....

Question 5. Do you own and control, or have a clear right to, the use of water sufficient to irrigate the whole of said land and for keeping the same permanently irrigated?

Answer. ....

Question 6. State the source and volume of the water supply, how acquired by you, and how maintained, and at what cost.

(Record evidence of the claimant's right to the use of the water, or other satisfactory evidence, in accordance with local laws, must be furnished.)

Answer. ....

Question 7. State from personal knowledge whether such water has been conducted during any one season upon all the irrigable area of the land for which this proof is made, and whether same has been irrigated and reclaimed from its desert condition to such an extent that it will produce an agricultural crop, or a paying crop of hay.

Answer. ....

Question 8. State also the number, dimensions, and carrying capacity of the main ditch or ditches, and also of all the ditches on each legal subdivision of the land which are used in irrigating same; also the cost of the dams and ditches and the amount expended in the aggregate, in compliance with the legal requirements.

(If an expenditure of \$3 per acre of the area of said land has not been shown by annual proofs, an itemized statement of expenditures must be furnished.)

Answer. ....

Question 9. State whether you have seen water distributed through and by means of said ditches over all the irrigable area in each legal subdivision for which this proof is made with a view to the proper reclamation thereof, and if so, state the dates when each distribution was made, and the quantity of water per acre used, and the time occupied in making the same, in each and every year.

Answer. ....

Question 10. If there are any high points or uneven surfaces not susceptible of practicable irrigation, state definitely the nature, extent, and aggregate area of same, and the proportion thereof in each legal subdivision of the entry. State whether any entire legal subdivision is not susceptible of irrigation.

Answer. ....

Question 11. Has any portion of the land been cultivated by actual tillage of the soil? If so, state definitely the number of acres thus tilled, and describe generally the tillage, and briefly state its time, its object, and its result.

Answer. ....

Question 12. Has an agricultural crop of any kind other than wild hay been planted or produced on any portion of the land? If so, state the kind of crop planted or raised, the average quantity per acre, and the number of acres employed in the planting and growth of said crop.

Answer. ....

Question 13. If an agricultural crop of any kind can not be produced on one-eighth portion of the land, by actual tillage of the soil, state whether a crop of wild hay of merchantable value has been raised upon said land as a result of actual irrigation, and state the area on which it was raised and the quantity produced per acre.

Answer. ....

Question 14. If there has been no actual tillage of the soil, or no agricultural crop planted or produced, state what climatic conditions adverse to suc-



cessful agriculture, if any, are prevalent in the region in which this land is located. State fully the effect of such conditions on agriculture.

Answer. ....

Question 15. If in your judgment actual tillage of the soil would injure or destroy its productive qualities, state definitely your reasons for believing that injury or destruction would result from actual tillage.

Answer. ....

Question 16. If paying crops of any kind have been raised on land adjacent to, or in the vicinity of, said land, without artificial irrigation, describe the same and state the year or years of cultivation, the kind of crop and quantity raised per acre and the conditions which made the production of such crops possible.

Answer. ....

Question 17. Has any coal or other minerals been discovered on said land, or is any coal or mineral known to be contained therein?

Answer. ....

Question 18. Are there any indications of coal, saline, or minerals of any kind on said land? If so, describe what they are.

Answer. ....

Question 19. Have you the sole and entire interest in the land for which this proof is made and in the right to the water sufficient to continuously irrigate the same?

Answer. ....

Question 20. Has any other person, individual, company, or corporation any interest whatever in said land or water appropriation? If so, give the name, residence, and occupation of each such person, the name, business, and locality of any such corporation or company, and the nature, amount, and extent of such interest.

Answer. ....

Question 21. Have you made any other desert-land entry, or has any other land embraced in any desert-land entry, in whole or in part, been assigned to you, or have you any interest, direct or indirect, in any other entry under the desert-land act?

Answer. ....

Question 22. Describe by legal subdivisions and by number, kind of entry, and office where made, any other entry or filing (not mineral), made by, or assigned in whole or in part to, you since August 30, 1890.

Answer. ....

\* Question 23. If this proof is not submitted within four years from date of entry, state the reason for the failure to make proof within said period.

Answer. ....

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above deposition will be punished as provided by law for such offense. (See Sec. 5392 R S.)

\* Note.—A correct diagram, showing the location of all ditches and improvements, must be furnished with this proof.

I hereby certify that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that deponent is to me personally known (or has been satisfactorily identified before me by .....); that I verily believe deponent to be (Give full name and post-office address.)

the identical person hereinbefore described, and that said deposition was duly subscribed and sworn to before me, at my office, in .....

(Town, county, and State.)

within the ..... land district, this ..... day of ....., 19..

.....  
(Official designation of officer.)

#### Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars,

and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[4—373a.]

(Form approved by the Secretary of the Interior, June 15, 1908.)

Department of the Interior.

DESERT-LAND ENTRY.

U. S. Land Office, ....., No. ....

Final Proof.

Testimony of Witness.

Question 1. State your name, age, residence, occupation, and post-office address.

Answer. ....

Question 2. Are you acquainted with ....., who offers proof for land embraced in Desert-Land Entry, No. ...., made on the ..... day of ....., 19., upon .....; how long have you known him, and where does he now reside?

Answer. ....

Question 3. Have you personal knowledge of this land? State its situation, the character of the soil, its proximity to water, and what natural streams, springs, or bodies of water are upon or pass through or adjoin it; and if any, is any part of the claim naturally irrigated by such stream or spring? State whether paying crops of any kind have been raised on any part of such land without artificial irrigation.

Answer. ....

Question 4. Does the entryman own and control, or have a clear right to, water sufficient to properly and permanently irrigate all the irrigable land for which this proof is made?

Answer. ....

Question 5. State the source and volume of the water supply, how acquired, and how maintained.

Answer. ....

Question 6. Has water been conducted upon the irrigable land for which this proof is made so as to irrigate and reclaim the same from its former condition to such an extent that it will produce an agricultural crop? If so, give the number, dimensions, and capacity of the main ditch or ditches, and also of all the ditches on each legal subdivision of the land which are used in irrigating the same, and the amount expended in complying with the legal requirements.

(If an expenditure of \$3 per acre of the area of said land has not been shown by annual proofs, an itemized statement of expenditures must be furnished.)

Answer. ....

Question 7. Have you seen water distributed through and by means of said ditches over all the irrigable area on each legal subdivision of the land? State the dates when each distribution took place, the duration thereof, and the quantity of water per acre used.

Answer. ....

Question 8. If there are any high points or uneven surfaces not susceptible of practicable irrigation, state definitely the nature, extent, and aggregate area of same, and the proportion thereof in each legal subdivision. Is any entire legal subdivision not susceptible of irrigation?

Answer. ....

Question 9. Has any portion of the land been cultivated by actual tillage of the soil? If so, state definitely the number of acres thus tilled, and describe generally the tillage, and briefly state its time, its object, and its result.

Answer. ....

Question 10. Has an agricultural crop of any kind other than wild hay been planted or produced on any portion of the land? If so, state the kind



of crop planted or raised, the average quantity per acre, and the number of acres employed in the planting and growth of said crop.

Answer. ....

Question 11. If an agricultural crop of any kind can not be produced on one-eighth portion of said land, by actual tillage of the soil, state whether a crop of wild hay of merchantable value has been raised upon any part of said land as a result of actual irrigation, and state the area on which it was raised and the quantity produced per acre.

Answer. ....

Question 12. If there has been no actual tillage of the soil, or no agricultural crop planted or produced, state what climatic conditions adverse to successful agriculture, if any, are prevalent in the region in which this land is located. State fully the effect of such conditions on agriculture.

Answer. ....

Question 13. If in your judgment actual tillage of the soil would injure or destroy its productive qualities, state definitely your reasons for believing that injury or destruction would result from actual tillage.

Answer. ....

Question 14. If paying crops of any kind have been raised on any lands adjacent to, or in the vicinity of, said land, without artificial irrigation, describe the same and state the year or years of cultivation, the kind of crop and quantity raised per acre and the conditions which made the production of such crops possible.

Answer. ....

Question 15. Has any coal or other minerals been discovered on said land, or is any coal or mineral known to be contained therein? Are there any indications of coal, salines, or minerals of any kind on said land? If so, describe what they are.

Answer. ....

Question 16. Have you any interest, direct or indirect, in this entry or in the land covered thereby, or in the water supply used in its irrigation?

Answer. ....

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above deposition will be punished as provided by law for such offense. (See Sec. 5392 R. S., below.)

I hereby certify that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that deponent is to me personally known (or has been satisfactorily identified before me by .....); that I verily believe deponent to be a credible witness and the identical person hereinbefore described, and that said deposition was duly subscribed and sworn to before me, at my office, in....., within the

(Town.)

.....land district, this.....day of

(County and State.)

....., 19....

(Official designation of officer.)

#### Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[4-385.]

No.....

COAL LANDS.

Application to Purchase Pursuant to Section 2348 R. S.

Department of the Interior,

United States Land Office at.....

....., 19....

I, ....., of....., claiming, under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the preference right to purchase the.....of Section....., in Township....., of Range....., subject to sale at the district land office at..... hereby apply to purchase and enter the same; and I do solemnly swear that I have not hitherto held (except ..... ) or purchased, either as an individual or as a member of an association, any coal lands under the aforesaid provisions of the law; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of.....dollars, the nature of such improvements being as follows: .....; that I am now in the actual possession of said mines, and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper. So help me God.

.....  
(Sign full Christian name.)

I hereby certify that the foregoing application was read to applicant in my presence before he signed his name thereto; that said applicant is to me personally known (or has been satisfactorily identified before me by.....), and that I verily believe him to be a qualified person and the person he represents himself to be, and that this application was subscribed and sworn to before me at my office in....., within the....., land district, on this.....day of....., 19... day of....., 19....

.....  
(Official designation of officer.)

\*This application must be personally verified by applicant before the Register or Receiver.

[4-511.]

Department of the Interior,

United States Land Office.

....., 19...

....., Contestant,

versus

....., Contestee.

STATEMENT OF COSTS.

Deposited by Contestant under Rule 58 of Practice.....	\$.....
Deposited by Contestant as advanced testimony fees....	.....
Deposited by Contestant as cancellation fee.....	.....
Deposited by Contestee under Rule 58 of Practice.....	.....
Deposited by Contestee as advanced testimony fees....	.....
Total amount deposited by both parties.....	\$.....
Amount of testimony fees earned from the Contestant... \$.....	
Amount of testimony fees earned from the Contestee....	.....
Amount retained as the unearned cancellation fee.....	.....



Amount returned to the Contestant as unearned fees.....  
 Amount returned to the Contestee as unearned fees.....  
 Total amount of deposits thus accounted for..... \$.....  
 Total amount of earned fees paid to Contest Clerk..... \$.....  
 Earned fees deposited to credit of U. S. Treasurer.....  
 Cancellation fee retained as unearned.....  
 Unearned moneys returned to Contestant and Contestee.....

Total amount thus accounted for..... \$.....

The above and foregoing is a true and correct statement of all moneys coming into our hands on account of the above-mentioned contest, and of the disposition we made of the same.

....., Register.  
 ..... , Receiver.

Note.—This statement should be carefully and accurately filled out and filed with the record of each contest case, as required by rule 65 of the Rules of Practice, and local officers will hereafter be held accountable for any failure to do so in any case tried before them.

[4—519.]

Application for Leave of Absence, page 28. Also forms under Three-Year Homestead Law, page 28.

[4—522.]

Departmental regulations approved by the Secretary of the Interior November 30, 1908.

Department of the Interior.

#### TIMBER OR STONE ENTRY.

U. S. Land Office, ..... No.....  
 Receipt No.....

Application and sworn statement.  
 (To be made in duplicate.)

I, ....., hereby make  
 (Give full Christian name.)  
 (Male or female.)

application to purchase the.....  
 Section....., Township....., Range.....  
 Meridian, containing.....acres, within the.....  
 land district, in the State of....., and the timber thereon, at  
 such value as may be fixed by appraisalment, made under authority of the  
 Secretary of the Interior, under the Act of June 3, 1878, commonly known as  
 the "Timber and Stone Law," and Acts amendatory thereof, and in support  
 of this application I do solemnly swear that I.....

(Applicant must state whether native born, naturalized, or has filed declaration of  
 intention to become a citizen. If not native born, certified copy of naturalization or  
 declaration of intention, as case may be, must be filed with this affidavit.)

.....  
 citizen of the United States, of the age of.....years, and by occu-  
 pation a.....; that I did, on....., 19..  
 examine said land, and from my personal knowledge state that said land is  
 unfit for cultivation and is valuable chiefly for its timber; and that to my  
 best knowledge and belief, based upon said examination, the land is worth  
 .....dollars, and the timber thereon, which  
 I estimate to be.....feet, board measure, is worth.....  
 dollars, making a total value for the land and timber of.....  
 dollars, and no more; that the land is uninhabited; that it contains no mining  
 or other improvements, nor, as I verily believe, any valuable deposit of gold,  
 silver, cinnabar, copper, coal, or other minerals, salt springs, or deposits of  
 salt; that I have made no other application under said Acts; that I do  
 not apply to purchase the land above described on speculation, but in good  
 faith to appropriate it to my own exclusive use and benefit, and that I  
 have not, directly or indirectly, made any agreement or contract, in any  
 way or manner, with any person or persons whomsoever, by which the title  
 I may acquire from the Government of the United States may inure in whole  
 or in part to the benefit of any person except myself; that since August 30,  
 1890, I have not entered and acquired title to, nor am I now claiming, under  
 an entry made under any of the nonmineral public-land laws, an amount of

land which, together with the land now applied for, will exceed in the aggregate 320 acres; that I am not a member of any association, or a stockholder in any corporation which has filed an application and sworn statement under said Act; and that my post-office address is.....

(If a city, street and number must be given.)

at which place any notice affecting my rights under this application may be sent.

I request that notice be furnished me for publication in the.....  
.....newspaper, published at

(The newspaper must be one of general circulation, published nearest the land.)  
.....

(Sign here, with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S., below.)

In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land, or of any right, title, or claim thereto, are absolutely null and void as against the United States.

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....); that I verily believe affiant

(Give full name and post-office address.)

to be a qualified applicant and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office in .....

(Town.)

(County and State.)

within the.....land district, this.....day of  
....., 19...

.....  
(Official designation of officer.)

#### Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

[4—524.]

Department of the Interior,  
United States Land Office,

.....

(Place.)

.....

(Date.)

#### NOTICE OF APPRAISEMENT.

.....

Sir:

You are informed that the land, and the timber thereon, embraced in your Timber and Stone Application, No....., filed....., have been appraised in the sum of.....dollars.

You are therefore notified that your application for said land will be



dismissed without further notice, if you do not, within thirty days after date of this notice, deposit the appraised price of the land with the Receiver of this office, or file your written protest against such appraisement, setting forth clearly and specifically your objection thereto, which protest must be sworn to by you, and corroborated by two competent, credible, and disinterested persons. The protest, if filed, must be accompanied by your application requesting that the land be reappraised at your expense, and you must deposit with the Receiver the sum of.....dollars, to be expended therefor, and you must indicate your consent that the amount so deposited may be expended for the reappraisal, without any claim on your part that any portion thereof so expended shall be returned or refunded to you.

If a reappraisal is made under your application, you will secure no right or privilege, except that of purchasing the lands at their appraised value, if they are subject to sale and you are properly qualified.

Very respectfully,

....., Register.  
....., Receiver.

[4—545.]

Department of the Interior.

HOMESTEAD DECLARATORY STATEMENT.

U. S. Land Office, ....., No.....

Receipt No.....

Note.—This form may be used where the declaratory statement is filed by an agent under section 2309, Revised Statutes.

I, ....., of..... County, and State or Territory of....., do solemnly swear that I served for a period of..... in the Army of the United States, during the.....

(Here state whether service was during the War of the Rebellion, the Spanish War, or the suppression of the insurrection in the Philippines.)

.....and was honorably discharged therefrom, as shown by a statement of such service herewith, and that I have remained loyal to the Government; and that I have never made a homestead entry or filed a declaratory statement under section 2290, section 2304 as amended by the Act of March 1, 1901 (31 Stat., 847), or section 2309 of the Revised Statutes; that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that since August 30, 1890, I have not entered and acquired title to, nor am I now claiming, under an entry made under any of the nonmineral public-land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres; that I have appointed, by power of attorney duly executed on the.....day of....., (or I do hereby appoint).....of.....

County and State of....., my true and lawful agent, under section 2309 aforesaid, to select for me and in my name, and file my declaratory statement for a homestead right under the aforesaid sections; and I hereby give notice of my intention to claim and enter said tract under said statute; that the location herein authorized is made for my exclusive use and benefit, for the purpose of my actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person; that my said attorney has no interest, present or prospective, in the premises, and that I have made no arrangement or agreement with him or any other person for any sale or attempted sale or relinquishment of my claim in any manner or for any consideration whatever, and that I have not signed this declaration in blank.

(Sign here, with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by.....); that I verily believe

(Give full name and post-office address.)

affiant to be a qualified applicant and the identical person hereinbefore de-

scribed; and that said affidavit was duly subscribed and sworn to before me,  
at my office, in....., this  
(County and State.)  
.....day of....., 19....

(Official seal.)

(Official designation of officer.)

By virtue of the foregoing, and of a certain power of attorney therein  
named, duly executed on the.....day of.....  
19.., and filed herewith, I hereby select the.....  
.....Section....., Township....., Range.....  
.....Meridian, as the homestead claim of  
the aforesaid, and do solemnly swear that  
the same is filed in good faith for the purposes therein specified, and that I  
have no interest or authority in the matter, present or prospective, beyond  
the filing of the same as the true and lawful agent of the said.....  
....., as provided by section 2309 of the Revised  
Statutes of the United States.

Agent.

Sworn to and subscribed before me this.....day of  
....., 19....

(Official seal.)

(Official designation of officer.)

**Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.**

Sec. 5392. Every person who, having taken an oath before a competent  
tribunal, officer, or person, in any case in which a law of the United States  
authorizes an oath to be administered, that he will testify, declare, depose,  
or certify truly, or that any written testimony, declaration, deposition, or  
certificate by him subscribed is true, willfully and contrary to such oath  
states or subscribes any material matter which he does not believe to be true,  
is guilty of perjury, and shall be punished by fine of not more than two  
thousand dollars, and by imprisonment, at hard labor, not more than five  
years; and shall, moreover, thereafter be incapable of giving testimony in any  
court of the United States until such time as the judgment against him is  
reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or  
willfully in anywise procures the making or presentation of any false or  
fraudulent affidavit pertaining to any matter within the jurisdiction of the  
Secretary of the Interior may be punished by fine or imprisonment.

[4—548.]

Department of the Interior.

**RESERVOIR DECLARATORY STATEMENT.**

U. S. Land Office, ....., Serial No.....

Receipt No.....

Note.—When the applicant is a corporation the form should be executed  
by its president, under its seal, and attested by its secretary. When the appli-  
cant is not a corporation or an association of individuals strike out the words  
in italics.

I, ....., of.....,

(Give full post-office address.)

do hereby certify that I am the president of the.....  
company, and on behalf of said company and under its authority do hereby  
apply for the reservation of land in.....County,  
State of.....for the construction and use of a  
reservoir for furnishing water for live stock under the provisions of the Act  
of January 13, 1897 (29 Stat., 484). The location of said reservoir and of  
the land necessary for its use, is as follows:.....  
.....Section....., Township.....,  
Range....., Meridian, containing.....  
acres.

I hereby certify that to the best of my knowledge and belief the said  
land is not occupied or otherwise claimed, is not mineral or otherwise reserved,



and that the said reservoir is to be used in connection with the business of the applicant of.....

(The description of the business of the applicant should include "a full and minute statement of the extent to which he is engaged in breeding, grazing, driving, or ..... transporting live stock, giving the number and kinds of such stock, the place where they are being bred or grazed, and whether within an inclosure or upon uninclosed lands, and ..... also from where and to where they are being driven or transported." Circular June 6, 1908).

The land owned or claimed by the applicant within the vicinity of the said reservoir (within 3 miles) is as follows:.....

I further certify that no part of the land to be reserved under this application is or will be fenced; that the same shall be kept open to the free use of any person desiring to water animals of any kind; that the land will not be used for any purpose except the watering of stock; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the land department.

The water of said reservoir will cover an area of..... acres, in....., Section....., Township.....,

(State smallest legal subdivision.)

Range....., of said lands; the capacity of the water for said reservoir will be.....gallons, and the dam will be.....feet high. The source of the water for said reservoir is.....

and there are no streams or springs within two miles of the land to be reserved except as follows: .....

(State location by legal subdivisions.)

The applicant has filed no other declaratory statements under this Act, except as follows:.....

Number.	Land office.	Area to be reserved—Acres.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Total, .....acres, of which Nos. ....are located in said County.

And I further certify that it is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

(Sign here, with full Christian name.)

(Seal of company.)

Attest: .....

Secretary.

State of.....

County of.....

ss:

....., being duly sworn, deposes and says that the statements herein made are true to the best of his knowledge and belief.

(Signature.)

Duly sworn to and subscribed before me this..... day of....., 191..

(Seal.)

(Official designation of officer.)

....., 191....  
I hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897: that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the land department.

....., Register.

[4—590.]

Township No..... Range No..... Mer.

[4—621.]

Department of the Interior.

General Land Office.

RELINQUISHMENT.

I hereby relinquish to the United States all my right, title, and claim in and to the following-described land:....., 19..  
 ..... Section....., Township....., Range.....,  
 ..... Meridian, embraced in.....,  
 (Kind of application or entry.)  
 No....., made at the U. S. Land Office at.....  
 Receiver's Receipt No.....

(Signature.)

Witnesses:

(Name and address.)

(Name and address.)

Acknowledged before me this.....day of....., 19....

(Official designation.)

The relinquishment accompanying a Repayment Application must be executed before the Register or Receiver, or before an officer qualified to take acknowledgments of deeds.

Other relinquishments may be accepted if the signature of the entryman is attested by two witnesses.

[4—622.]

SUBPENA.

The United States of America,

To.....

You are hereby commanded to appear before.....,  
 at.....office, in....., in the County of.....,  
 State (or Territory) of....., at the hour of.....M., on the  
 .....day of....., to testify in behalf of  
 .....at a hearing, to be then and there held,  
 wherein .....  
 is....., and herein fail not at your peril.

Issued this.....day of.....

County of.....

State of.....

ss:

I, ....., being first duly sworn, upon my oath say that I served the above subpoena in the County of....., in the State (or Territory) of.....on the.....day of....., by then and there delivering a true copy thereof each to the within-named witnesses, to wit:.....

Subscribed and sworn to before the undersigned this.....day of.....

(Official designation.)

The law under which this subpoena is issued (Act January 31, 1903) provides:

Sec. 2. That witnesses shall have the right to receive their fee for one day's attendance and mileage in advance. The fees and mileage of the witnesses shall be the same as that provided by law in the district courts of the



United States in the district in which such land offices are situated; and the witness shall be entitled to receive his fee for attendance in advance from day to day during the hearing.

Sec. 3. That any person willfully neglecting or refusing obedience to such subpoena, or neglecting or refusing to appear and testify when subpoenaed, his fees having been paid if demanded, shall be deemed guilty of a misdemeanor, for which he shall be punished by indictment in the district court of the United States or in the district courts of the Territories exercising the jurisdiction of the circuit or district courts of the United States. The punishment for such offense, upon conviction, shall be a fine of not more than two hundred dollars, or imprisonment not to exceed ninety days, or both, at the discretion of the court: Provided, That if such witness has been prevented from obeying such subpoena without fault upon his part, he shall not be punished under the provisions of this Act.

(This application should be submitted in triplicate; one original and two copies.)

[Form No. 4—022b.]

(Read the instructions at the bottom of this form.)

#### APPLICATION FOR PERMIT TO CUT TIMBER.

....., 19..  
The Commissioner of the General Land Office, Washington, D. C.

Your petitioners respectfully show—

(1) That they are residents of the state of....., and that they live .....

(2) That they urgently need certain amounts of native pine and other timber to make lumber for their individual use, as contemplated by the Act of March 3, 1891 (26 Stat., 1093), as extended by Act of February 13, 1893 (27 Stat., 444), and the Act of March 3, 1901 (31 Stat., 1436), and March 22, 1901, as set forth in circular of February 10, 1900, "for agricultural, mining, manufacturing, or domestic purposes, \* \* \* under the rules and regulations to be made and prescribed by the Secretary of the Interior."

(3) That the petitioners are not in a position to go upon the public domain and cut and get out said timber; that there are no National Forests or private dealers in timber or lumber from whom petitioners can procure the material of the grade wanted at a price less than \$..... per.....

(4) That said agent will make no charge for the timber cut on the public domain, the only charge being for the necessary time, labor, and legitimate expense in getting it out, plus a fair price per thousand feet for sawing the same into lumber.

(5) Your several petitioners will require for their use, in the aggregate—

About.....thousand feet of.....

About.....thousand feet of.....

About.....thousand feet of.....

About.....thousand feet of.....

About.....thousand feet of.....

making a grand total of.....feet of timber, which when cut into lumber will amount to about.....feet, board measure.

(6) That the timber to be cut is in Township....., Range....., and Sections.....

and that the same will be cut and removed from said lands in one year from the date of granting this petition.

(7) That the removal of this timber will not interfere with, lessen, or damage the water supply, or injuriously affect any public interest; and that said timber is for the actual use of the petitioners as above set out, and is not to be sold, nor bartered, nor exported from the State of.....

Wherefore your petitioners earnestly request that....., be permitted to act as their agent in cutting, felling, rafting, and sawing a sufficient amount of lumber, to be cut from timber on the lands hereinbefore mentioned, to meet

their requirements as above set out, and as provided in the General Land Office circular "P," approved February 10, 1900.

In the distribution of said timber among your petitioners, the quantity and description each will require is set forth opposite their respective names as follows:

This Memoranda of Agreement, in triplicate, made and entered into by and between....., party of the first part, of the County of....., and State of..... and.....et al., residents of the County of....., and State of....., all of whose names are subscribed to a certain petition addressed to the Honorable Commissioner of the General Land Office, and which is hereunto attached and made a part of this agreement.

Witnesseth, That, whereas it is desirable that the aforesaid party of the first part shall act as the agent of the said parties of the second part, and by this agreement does agree to so act, in cutting, felling, logging, rafting, and manufacturing of timber into lumber for the use of said parties of the second part, as provided under the Act of March 3, 1891, and promulgated in circular of February 10, 1900.

Now, Therefore, as provided in said section 4 of said circular, we do jointly and severally appoint....., party of the first part, our agent to procure timber from unoccupied, unreserved, nonmineral Government land, to be manufactured into lumber, and for the uses and purposes specified in section 3 of said circular of February 10, 1900, a copy of which is hereunto attached and made part of this agreement; and our said agent, party of the first part, agrees to procure.....feet of timber, and to manufacture the same into lumber, for the uses and purposes as provided in said section 3.

And we, the party of the second part, hereby agree to pay to our said agent, the party of the first part, as full compensation for his time, labor, and other legitimate expenses incurred in connection with the cutting, felling, logging, rafting, and manufacturing of said timber into lumber, exclusive of any charge for the timber itself, the sum of \$.....per 1,000 feet for the timber so manufactured into lumber and delivered to us; and it is further agreed by and between the parties hereto that no timber shall be manufactured on the shares or taken or exchanged in payment for work.

It is further agreed, That no green trees less than 12 inches in diameter 30 inches above the ground shall be cut, except in special cases where recommended by a special agent and approved by the Commissioner of the General Land Office, and in all cases the agreement provides for the piling of brush and rubbish in compact medium-sized piles for burning at a safe distance from the remaining timber.

It is also further agreed, and mutually understood by the parties hereto, that the life of this said agreement shall be for one year only, and which year shall begin to run on and after the date of permit, if approved, of the petition as prayed for, and herewith attached.

In witness whereof, the said parties of the first and second parts have hereunto set their hands and seals this.....day of....., 19..

.....[Seal]  
.....[Seal]

Approved this.....day of....., 19..

.....  
Commissioner.

To the Commissioner of the General Land Office:

I, ....., a citizen of the United States, and resident of the State of....., do hereby accept the agency sought to be established by your petitioners, and hereby agree to cut and remove.....feet of timber from the lands designated in said petition attached, and to manufacture the same into lumber at or near the town of....., in.....County....., and to deliver the same to your several petitioners in such quantities and dimensions as is petitioned for by them for the uses and purposes mentioned in said petition, at a cost of \$.....per 1,000 feet, which sum is to cover my time, labor, and other legitimate expenses incurred in connection with the manufacture of said timber into lumber, exclusive of any charge for the timber itself.

That I will cut and remove such timber within one year from date of



granting said petition, and that I will observe all rules and regulations issued by the Department relative to the removal of timber from the public lands of the United States.

This.....day of....., 19.....[Seal.]

### VERIFICATION.

State of.....

County of.....

ss:

....., being first duly sworn according to law, on oath, says: I am one of the petitioners above named; I have read or heard read the foregoing petition, and know the contents thereof; the same is true, of my own knowledge.

Sworn and subscribed before me this.....day of....., 19.....

### CORROBORATING AFFIDAVIT.

State of.....

County of.....

ss:

.....and ..... being severally duly sworn according to law, each for himself, on oath, says: I reside

..... in said County and State; I am well acquainted with said township, the timber land and the water courses therein. It would do no harm, in my opinion, to the water supply, nor would it injuriously affect any public interest, to permit the cutting and removal of the quantity and kinds of timber required by petitioners from the lands hereinbefore described. I have no interest in this matter.

Sworn and subscribed before me this.....day of....., 19.....

### NONMINERAL AFFIDAVIT.

(This affidavit can be sworn to only on personal knowledge and can not be made on information and belief.)

Department of the Interior,  
United States Land Office,

....., 19.....

....., being duly sworn according to law, deposes and says that he is the identical.....who is

..... that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land; and that his post-office address is.....

I hereby certify that the foregoing affidavit was read to affiant in my pres-

ence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by.....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in.....within the.....land district, on this.....day of....., 19.....

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

**Revised Statutes of the United States. Title LXX.—Crimes.—Chap. 4.**

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

**INDORSEMENT BY CHIEF OF FIELD DIVISION.**

The within petition to cut timber came into my hands for examination on the.....day of....., 19.., and the examination being complete, permission to cut.....feet of timber for the petitioners whose names I have initialed is hereby granted. The petition as to names by me not initialed is hereby denied. My action hereon is subject to revision by the Commissioner of the General Land Office. It is understood that cutting of timber under this permit shall at once cease should my action herein as to permission to cut be revoked by the Commissioner.

Dated this.....day of....., 19..

.....  
Chief of Field Division, General Land Office.

**INSTRUCTIONS FOR FILLING IN BLANKS.**

1. Each petitioner should sign his name and address, giving occupation, kind of timber wanted, and amount of same.
2. Give full name of person or company who is to act as agent for the petitioners.
3. State full amount of timber wanted by the petitioners.
4. State township, range, and sections of land desired to be cut from, if surveyed; if unsurveyed, so state, and name mountains where the timber grows, also names of creeks, rivers, or any natural landmark that would locate the timber to be cut, and in all cases wide areas of land should be avoided.
5. One of the petitioners should make the first affidavit, and two or more reliable, disinterested citizens should make the second affidavit, which should be acknowledged before a notary public or some other officer having a seal.
6. The nonmineral affidavit should be filled out and signed by a competent, reliable person who is acquainted with the land upon which it is desired to cut timber.
7. The petition, when completed, must be forwarded to the Chief of Field Division, General Land Office, at the post-office address given below, who will take up same at once and have an examination made of the land and timber described by the petitioners and report thereon to the Commissioner of the General Land Office, with proper recommendations.

The address of the Chief of Field Division who has charge of the State named is as follows:

Oregon: Portland.

California, Nevada: Oakland, California.

Washington, Idaho (Coeur d'Alene, Lewiston): Spokane, Washington,

Montana: Helena.

Colorado: Denver.



Arizona, New Mexico: Santa Fe, New Mexico.  
 Wyoming, South Dakota (Rapid City): Cheyenne, Wyoming.  
 North Dakota, South Dakota (except Rapid City): Fargo, North Dakota.  
 Utah, Idaho (Boise, Hailey, Blackfoot): Salt Lake City, Utah.

## CIRCULAR.

Rules and Regulations Governing the Use of Timber on Nonmineral Public Lands in Certain States and Territories, under the Act of March 3, 1891 (26 Stat., 1903), as Extended by the Act of February 13, 1893 (27 Stat., 444).

Department of the Interior,  
 General Land Office,

Washington, D. C., February 10, 1900.

By virtue of the power vested in the Secretary of the Interior by the Act of March 3, 1891 (26 Stat., 1903), the following rules and regulations are hereby prescribed:

1. The Act, so far as it relates to timber on public lands, as extended by the Act of February 13, 1893 (27 Stat., 444), applies only to the States of Colorado, Montana, Idaho, North Dakota, South Dakota, Wyoming, Nevada, and Utah, and the Territories of Arizona and New Mexico. The Act originally extended to the District of Alaska, but in that respect it has been superseded by section 11 of the Act of May 14, 1898 (30 Stat., 409), under which other and separate regulations are prescribed for the District of Alaska.

2. The intention of the Act of March 3, 1891, is to enable settlers upon public lands and other residents within the States and Territories above named to secure from public timber lands timber or lumber for agricultural, mining, manufacturing, or domestic purposes, for use in the State or Territory where obtained, under rules and regulations to be made and prescribed by the Secretary of the Interior.

3. Settlers upon public lands and other residents of the States and Territories above named may procure timber free of charge from unoccupied, unreserved, nonmineral public lands within said States and Territories, strictly for their own use for firewood, fencing, building, or other agricultural, mining, manufacturing, or domestic purposes, but not for sale or disposal, nor for use by other persons, nor for export from the State or Territory where procured. The cutting or removal of timber or lumber to an amount exceeding in stumpage value \$50 in any one year will not be permitted, except upon application \* \* \* and after the granting of a special permit. Except as above provided, it is not necessary for actual residents to secure permission to take timber from public lands in said States and Territories for the purposes aforesaid. The exercise of such privilege is, however, subject at all times to supervision by the Department with a view to such restriction as may be deemed necessary.

4. In cases where qualified persons are not in position to procure timber from the public lands themselves, it is allowable for them to secure the cutting, removing, sawing, or other manufacture of the timber through the medium of others upon an agreement with the parties thus acting as their agents that they shall be paid a sufficient amount only to cover their time, labor, and other legitimate expenses incurred in connection therewith, exclusive of any charge for the timber itself; but no person, whether acting for himself, as an agent for another, or otherwise, will be permitted to cut or remove in any one year timber or lumber to an amount exceeding in stumpage value \$50, except upon application \* \* \* and upon the granting of a special permit.

5. The uses specified in section 3 of these rules and regulations constitute the only purpose for which timber may be taken from public lands in said States and Territories, under this Act.

6. The cutting and removing of timber, free of charge, under said Act of March 3, 1891, is confined to unreserved, unoccupied, nonmineral public lands, in the States and Territories named therein, inasmuch as the Act specifically provides that the same shall not operate to repeal the Act of June 3, 1878 (20 Stat., 88), which makes provision, in said States and Territories, for the free cutting of timber on public lands that are known to be of a strictly mineral character for the uses named in said Act.

7. It is further provided in said Act of March 3, 1891, that "nothing herein contained shall operate to enlarge the rights of any railway company to cut timber on the public domain." Consequently, no timber may be cut or

taken under this Act from public lands either by or for the use of any railroad company.

8. Section 2461, United States Revised Statutes, is still in force in the States and Territories herein named, and its provisions may be enforced against any person, or persons, who cut or remove, or cause or procure to be cut or removed, or aid or assist or are employed in cutting or removing, any timber from public lands therein, except as allowed by law.

10. All rules and regulations heretofore prescribed under said Act of March 3, 1891, relating to the use of timber on public lands in the above-named States and Territories, are hereby revoked.

W. A. Richards,  
Acting Commissioner.

Approved, February 10, 1900.  
E. A. Hitchcock,  
Secretary.

(This application should be submitted in triplicate; one original and two copies.)

[4—022d.]

(Read the Instructions at the Bottom of this Form.)

# APPLICATION FOR PERMIT TO CUT TIMBER ON MINERAL LANDS.

....., 19...  
The Commissioner of the General Land Office,  
Washington, D. C.

Your petitioners respectfully show—

(1) That they are residents of the State of ....., and that they live .....

(2) That they need certain amounts of timber for their individual use, as contemplated by the Act of June 3, 1878 (20 Stat., 88), as set forth in circular of March 16, 1909, "for building, agricultural, mining or other domestic purposes."

(3) That the petitioners are not in a position to go upon the lands and cut and get out said timber, and that they desire ....., who join in this petition, to act as their agent in procuring said timber.

(4) That said agent will make no charge for the timber to be cut, the only charge being for the necessary time, labor, and legitimate expense in getting it out, plus a fair price per thousand feet for sawing the same into lumber.

(5) Your several petitioners will require, for their use, in the aggregate—  
About ..... thousand feet of .....  
About ..... thousand feet of .....  
About ..... thousand feet of .....  
About ..... thousand feet of .....  
making a grand total of ..... feet of timber, which when cut into lumber will amount to about ..... feet, board measure.

(6) That the timber to be cut is in Township ....., Range ....., and Sections ....., and that the same will be cut and removed from said lands in one year from the date of granting this petition; that said lands are mineral lands and subject to entry only under the mineral land laws.

(7) That the removal of this timber will not interfere with, lessen, or damage the water supply, or injuriously affect any public interest; and that said timber is for the actual use of the petitioners as above set out, and is not to be sold, nor bartered, nor exported from the State of .....; and that said timber is not for the use or benefit of any railroad corporation.

Wherefore your petitioners earnestly request that ....., whose post-office address is ....., be permitted to act as their agent in cutting, felling, rafting, and sawing a sufficient amount of lumber, to be cut from timber on the lands hereinbefore mentioned, to meet their requirements as above set out, and as provided in the General Land Office circular, approved March 16, 1909.

In the distribution of said timber among your said petitioners, the quan-



tity and description each will require is set forth opposite their respective names as follows:

Name—	Occupation.	Kind of Timber.	Quantity.	For What Purpose.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

This Memoranda of Agreement, in triplicate, made and entered into by and between ....., party of the first part, of the County of ....., and State of ....., and ..... et al., residents of the County of ....., and State of ....., all of whose names are subscribed to a certain petition addressed to the Commissioner of the General Land Office, and which is hereunto attached and made part of this agreement.

Witnesseth, That, whereas it is desirable that the aforesaid party of the first part shall act as the agent of the said parties of the second part, and by this agreement does agree to so act in cutting, felling, logging, rafting, and manufacturing of timber into lumber for the use of said parties of the second part, as provided under the Act of June 3, 1878 (20 Stat., 88), and promulgated in circular of March 16, 1909.

Now, therefore, We do jointly and severally appoint ....., party of the first part, our agent to procure timber from unoccupied, unreserved, mineral Government land, to be manufactured into lumber, and for the uses and purposes specified in said circular of March 16, 1909, a copy of which is hereunto attached and made part of this agreement; and our said agent, party of the first part, agrees to procure ..... feet of timber, and to manufacture the same into lumber, for the uses and purposes as provided in said circular.

And we, the party of the second part, hereby agree to pay to our said agent, the party of the first part, as full compensation for his time, labor, and other legitimate expenses incurred in connection with the cutting, felling, logging, rafting, and manufacturing of said timber into lumber, exclusive of any charge for the timber itself, the sum of \$..... per 1,000 feet for the timber so manufactured into lumber and delivered to us; and it is further agreed by and between the parties hereto that no timber shall be manufactured on the shares or taken or exchanged in payment for work.

It is further agreed, That only matured timber is to be cut, and in all cases the agreement provides for the piling of brush and rubbish and disposing of same as may be required by the land department, and only such percentage of the timber as may be authorized shall be cut.

It is also further agreed, and mutually understood by the parties hereto, that the life of this said agreement shall be for one year only, and which year shall begin to run on and after the date of the permit to be granted by a Chief of Field Division of the General Land Office.

In witness whereof, the said parties of the first and second parts have hereunto set their hands and seals this ..... day of ....., 19..

..... [Seal.]  
..... [Seal.]

To the Commissioner of the General Land Office:

I, ....., a citizen of the United States, and resident of the State of ....., do hereby accept the agency sought to be established by your petitioners, and hereby agree to cut and remove ..... feet of timber from the lands designated in said petition attached, and to manufacture the same into lumber at or near the town of ....., in ..... County, ....., and to deliver the same to your several petitioners in such quantities and dimensions as is petitioned for by them for the uses and purposes mentioned in said petition, at a cost of \$..... per 1,000 feet, which sum is to cover my time, labor, and other legitimate expenses incurred in connection with the manufacture of said timber into lumber, exclusive of any charge for the timber itself.

That I will cut and remove such timber within one year from date of the permit, and that I will observe all rules and regulations issued by the Department relative to the removal of timber from the public mineral lands of the United States.

..... [Seal.]

This ..... day of ....., 19..

## AFFIDAVIT TO BE EXECUTED BY A PETITIONER.

State of ....., County of ....., ss.:

....., being first duly sworn according to law, on oath, says: I am one of the petitioners above named; I have read or heard read the foregoing petition, and know the contents thereof; the same is true, of my own knowledge.

Sworn and subscribed before me this ..... day of ....., 19..

[4—302.]

PERMIT BY CHIEF OF FIELD DIVISION TO FELL AND REMOVE  
TIMBER FROM MINERAL LANDS.

I hereby grant permit to ....., of ....., to fell and remove timber from the following lands: ..... for the use of the persons and in amounts as to each person stated below, viz.: ..... The tops and other débris shall be disposed of as follows: .....

Only ..... per cent of the total stand of timber, acre by acre, and only matured timber, shall be cut. The cutting authorized shall be completed within twelve months from this date.

My action in granting this permit is subject to revision by the Commissioner of the General Land Office, and it is to be understood that cutting of timber under this permit shall at once cease upon notice that my action in granting the same has been revoked by the Commissioner. Should this permit be revoked by the Commissioner, any cutting done under same will have to be paid for at a reasonable stumpage value.

.....  
Chief of Field Division.

Given this ..... day of ....., 19.., at .....

REPORT OF CHIEF OF FIELD DIVISION.

The matter of the above application has been investigated under my supervision, and above is a copy of permit granted by me subject to your fell and remove and to use the timber.

Remarks: .....  
approval.

The lands are mineral. The persons named are qualified, respectively, to (Here set out fully the matter required by section 4 of instructions of March 16, 1909.)

Dated this ..... day of ....., 19..

.....  
Chief of Field Division.

Approved this ..... day of ....., 19..

.....  
Commissioner.

INSTRUCTIONS FOR FILLING IN BLANKS.

1. Each petitioner should sign his name and address, giving occupation, kind of timber wanted, and amount of same.

2. Give full name of person or company who is to act as agent for the petitioners.

3. State full amount of timber wanted by the petitioners.

4. State township, range, and sections of land desired to be cut from, if surveyed; if unsurveyed, so state, and name mountains where the timber grows; also names of creeks, rivers, or any natural landmark that would locate the timber to be cut, and in all cases wide areas of land should be avoided.

5. One of the petitioners must make the affidavit which must be acknowledged before a notary public or some other officer having a seal.

6. The application should be forwarded to the Register and receiver of the proper local land office or to the proper Chief of Field Division.

7. In cases where the party applying desires the timber for his own use and the cutting is not to be done through an agent, the forms should be properly modified to show the facts.

Note.—For law and regulations see page 565.



### NOTICE OF LOCATION OF A PLACER CLAIM.—FORM B.

Notice is hereby given to whom it may concern: That ..... and ..... citizens of the United States, over the age of twenty-one years, have this day located under the Revised Statutes of the United States, and Chapter ....., Title ....., of ....., the following described placer mining ground, viz.: (Description), situated in ..... District, ..... County, State of ..... This claim shall be known as the ..... Claim, and we intend to work the same in accordance with the local customs and rules of miners in said district.

.....  
 .....  
 Dated on the ground, this sixth ....., ....

#### [Form No. C.]

### NOTICE OF LOCATION OF A QUARTZ CLAIM.

Notice is hereby given to all whom it may concern: That ..... and ..... citizens of the United States, over the age of twenty-one years, having discovered a vein or lode of quartz, or rock in place bearing gold, within the limits of the claim hereby located, have this day, under and in accordance with the Revised Statutes of the United States, Chap. VI., Tit. 32, located three thousand linear feet of this vein or lode, with surface ground three hundred feet in width, situated in ..... Mining District, County of ....., State of ....., and known as the ..... Claim, and extending three thousand feet north to ....., and ..... to ....., from this notice at the discovery or prospect shaft, the exterior boundaries of this claim being distinctly marked by reference to some natural object or permanent monuments, and more particularly described as follows, to-wit: (Descriptions.) And we intend to hold and work said claim as provided by the local customs and rules of miners, and the Mining Statutes of the United States.

.....  
 .....  
 Dated on the ground the ..... day of ....., ....  
 Discovered, ....., ..... Locator.  
 Located ....., ..... Recorded ....., ....  
 Attest:  
 .....

#### [Form No. D.]

### PROOF OF POSTING NOTICE AND DIAGRAM ON THE CLAIM.

State of ....., County of ....., ss.:

..... and ....., each for himself, and not one for the other, being first duly sworn according to law, deposes and says, that he is a citizen of the United States, over the age of twenty-one years, and was present on the third day of ....., ...., when a plat representing the claim, and certified to as correct by the United States Surveyor-General of ....., and designated by him as Lot No. ...., together with a notice of the intention of ..... and ..... to apply for a patent for the mining claim and premises so platted, was posted in a conspicuous place upon said mining claim, to-wit: ....., where the same could be easily seen and examined; the notice so conspicuously posted upon said claim being in words and figures as follows, to-wit:

Notice of the application of ..... and ..... for a United States patent.

Notice is hereby given that in pursuance of Chap. VI., of Tit. 32, of the Revised Statutes of the United States, ..... and ....., claiming three thousand linear feet of the vein, lode, or mineral deposit, bearing gold, with surface ground, three thousand feet in width, lying and being situated within the ..... District, County of ..... and State of ....., have made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted, and by the field notes of survey thereof, now filed in the office of the Register of the district of lands subject to sale at ....., ....., which field notes of survey describe the boundaries and extent of said claim on the surface, with magnetic variation at ..... (Description.)

The said mining claim being of record in the office of the Recorder of Records, ....., in the county and State aforesaid, the presumed general course or direction of the said vein, lode, or mineral deposit being shown upon the plat posted herewith, as near as can be determined upon present developments, this claim being for three thousand linear feet thereof, together with the surface ground shown upon the official plat posted herewith, the said vein, lode, and mining premises hereby sought to be patented, being bounded as follows: (Description.)

The said claim being designated as Lot No. .... in the official plat posted herewith.

Any and all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof, so described, surveyed, platted, and applied for, are hereby notified that unless their adverse claims are duly filed as according to law and the regulations thereunder, within sixty days from the date hereof, with the Register of the United States Land Office, ....., in the State of ....., they will be barred in virtue of the provisions of said statute.

Dated on the ground this third day of ....., ....

Subscribed and sworn to before me this ..... day of ....., ....., and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and notice were read by each of them before their signatures were affixed thereto and the oath made by them.

(Seal.)

[Form No. E.]

Serial No. ....

#### NOTICE FOR PUBLICATION.

United States Land Office.

Notice is hereby given that ....., whose post-office address is ....., has this ..... day of ....., ....., filed in this office ..... application to select under the provisions of (describe act) the (describe land).

Any and all persons claiming adversely the lands described, or desiring to object because of the mineral character of the land, or for any other reason, to the disposal to applicant, should file their affidavits of protest in this office, on or before the ..... day of ....., 19..

Register.

[Form No. F.]

Serial No. ....

Department of the Interior,

United States Land Office,

Notice is hereby given that ....., of ..... County, State of ....., whose post-office address is ....., ....., has this ..... day of ....., ....., filed in this office his application to make selection, location, and entry of the (describe land), as assignee of the person who is entitled to make location and entry thereof as the additional homestead right of ....., ....., deceased, and based upon Sections 2306 and 2307 of the Revised Statutes of the United States, and the rules and regulations of the Department of the Interior thereunder, granting additional lands to soldiers and sailors who served in the Army or Navy of the United States during the War of the Rebellion.

Any and all persons claiming adversely the lands described, or desiring to object because of the mineral character of the land, or any part thereof, or for any reason, to the disposal to applicant, should file their affidavits of protest in this office on or before the ..... day of ....., 19..

Register.

Posted .....

Published in .....



[Form No. G.]

FOREST RESERVE LIEU APPLICATION.

U. S. Land Office at ....., 19..

Notice is hereby given that ....., whose post-office address is ....., has made application to select under the provisions of the Act of June 4, 1897 (30 Stat., 36), the following described tract: .....

Within the next 30 days from the date hereof protests or contests against this selection on the ground that the land described, or any portion thereof, is more valuable for its minerals than for agricultural purposes, will be received and noted for report to the Commissioner of the General Land Office.

..... Register.

First publication, ....., 19..

Posted on claim, ....., 19..

[Form No. H.]

Serial No. ....

SCRIP LOCATIONS—AFFIDAVIT OF POSTING.

Department of the Interior,

United States Land Office,

In Re Application to Locate .....

.....

Serial No. ...., Sec. ...., Tp. ...., Range ....  
State of ...., County of ...., ss.:

....., of ....., being first duly sworn, on oath deposes and says: that he is the identical person, or the attorney, or agent, of the person who located the above described land under .....; that he posted a copy of the hereto attached notice upon said land on the ....., 19..; that said notice was posted in a conspicuous place thereon, to-wit: (Describe place of posting and manner of posting)\*; that said notice remained posted for more than ..... days, and all during the period of publication; that said land is not adversely claimed, nor in the possession of any Indian.

Subscribed and sworn to before me this ..... day of .....

(Official title.)

\* If no suitable place is available for posting, place notice in open box on a post set in the ground, care being used to have the posted notice extend at least 2½ feet above the surface of the ground.

† Affidavit of publisher may be on form 4—348b, page 557.

AFFIDAVIT OF POSTING CONTEST.

Serial No. ....

Contest No. ....

Department of the Interior,

United States Land Office,

.....  
..... Contestant,

v.

..... Contestee.

Involving ....., Sec. ...., Tp. ...., Range ....  
State of ...., County of ...., ss.:

....., of ....., being first duly sworn, on oath deposes and says: that he is the contestant in the above entitled contest; that he posted copy of her to attached notice on the above described land, in a conspicuous place thereon, to-wit: (Describe place and manner of posting.)\*

That said notice remained so posted for a period of ..... days, and continued so posted during the entire period of publication.

Subscribed and sworn to before me this ..... day of ....., 19..

(Official title.)

\* If posted on post set in the ground, the notice should extend at least 2½ feet above the surface.

Serial No. ....

Contest No. ....

### AFFIDAVIT OF MAILING CONTEST.

Department of the Interior,  
United States Land Office,

.....  
Contestant,

v.

.....  
Contestee.

State of ....., County of ....., ss.:

....., being first duly sworn, on oath deposes and says: that he is ..... in the above entitled contest; that he mailed the defendant a true copy of the notice of contest issued herein, on the ..... day of ....., through registered United States mail, at the following addresses, to-wit: ....., said addresses being the record address, the post-office nearest the land, and the last known post-office address of the contestee. Evidence of mailing is herewith attached and made a part hereof.

Subscribed and sworn to before me this ..... day of ....., ..

(Official title.)

K.

Serial No. ....

### APPOINTMENT OF ATTORNEY.

Department of the Interior,  
United States Land Office,

In Re

....., Sec. ...., Tp. ...., of Range .....

To Hon. Register and Receiver,  
United States Land Office,

Gentlemen: I hereby appoint Mr. ...., of ....., as my attorney to represent me in the above entitled matter, and authorize him to accept service, and to do any and all things necessary for the accomplishment of the purpose for which he is appointed.

.....  
P. O. ....

Witness:

L.

Serial No. ....

### NOTICE OF APPEAL.

Department of the Interior,  
United States Land Office,

In Re

....., Sec. ...., Tp. ...., R. ....



## NOTICE OF APPEAL.

You will please take notice that ..... hereby appeals to ..... from the decision of ..... rendered in the above entitled matter on the ..... day of ....., 19.., and from the whole thereof.

This appeal is taken upon both law and fact.

Note.—If the decision complained of is identified by letter and initial, the division and initials should be given.

Note.—See specifications of error.

M.

Serial No. ....

## SPECIFICATIONS OF ERROR.

Department of the Interior,  
United States Land Office,

In Re

.....  
.....

....., Sec. ...., T. ...., Range ....., .....

Statement of case: (Here give record facts.)

Specifications of error: (Here state distinctly the errors relied upon for reversal of the decision complained of.)

N.

Serial No. ....

## AFFIDAVIT OF LOSS OR DESTRUCTION OF REGISTER'S FINAL CERTIFICATE.

To the Register United States Land Office,

I respectfully ask that patent for ..... entry No. ...., embracing ..... Sec. ...., Tp. ...., ....., be delivered to me upon the following affidavit in lieu of the Register's Final Duplicate Certificate.

Applicant.

State of ....., County of ....., ss.:

....., being duly sworn, on oath deposes and says: that he is the same identical person who made the entry described above, to-wit: ..... entry, Serial No. ...., for ....., Sec. ...., Tp. ...., Range ....., ....., that I have lost or destroyed the duplicate copy of Register's Final Certificate issued to me in the above described matter, and after diligent search and inquiry I am unable to produce said certificate.

Subscribed and sworn to before me this ..... day of .....

.....  
(Official title.)

O.

Serial No. ....

## REQUEST FOR PATENT.

Affidavit of present owner.

State of ....., County of ....., ss.:

....., being first duly sworn, on oath deposes and says: that he is the present owner of the following described land, to-wit: (Here describe land.) That said land is embraced in ..... Entry No. ....; that Register's duplicate certificate can not be produced, and affiant respectfully asks that patent be delivered to him.

Subscribed and sworn to before me this ..... day of ....., 19..

.....  
(Official title.)

FORM P.

## NOTICE OF MORTGAGE.

Serial No.....

(Date).....

TO THE REGISTER AND RECEIVER,  
UNITED STATES LAND OFFICE,

GENTLEMEN: You will please take notice that....., who made homestead entry No.....on the.....day of....., 19.... for....., Sec....., T....., R....., did, on the..... day of.....19...., make and execute a mortgage deed to said land in the sum of.....Dollars in favor of..... The said mortgage is recorded in the office of the Recorder of Deeds for the County of....., State of.....

We respectfully request that due notice hereof be noted upon the records in your office, and that the undersigned be notified of any action on the part of the entryman or other person acting in his behalf looking to the cancellation of said entry, either by relinquishment or contest or otherwise. This notice is intended to act as and for an objection by the undersigned to the cancellation of said entry without his having due notice, knowledge, and information thereof, and in case the above land is located within a reclamation project under the Act of June 17, 1902, the undersigned objects to the cancellation or assignment thereof unless his written consent thereto be filed.

.....  
Owner. of said mortgage.



[4—072h]

Serial No. ....  
Contest No. ....

MOTION FOR DEFAULT.

Department of the Interior,  
United States Land Office.

V.

Contest of ..... Entry No. ...., dated .....,  
19.., for the ..... Sec. ...., Tp. ...., R. ....

Comes now the contestant in the above-entitled case, and moves that the default of the defendant be entered, no answer to the charges set forth in the contest affidavit having been filed.

By .....  
His Attorney.

Filed, and default entered of record ..... , 191..

Register.

Receiver.

Rule of Practice 14, as amended July 24, 1912:

Upon the failure to serve and file answer as provided by Rule 13, the allegations of the contest affidavit will, on motion of contestant made within 20 days after the date the answer is required to be filed and before any answer is filed, be taken as confessed, or in case of failure of contestee to file answer and of contestant to file motion within the time prescribed, the allegation of the contest affidavit may be taken as confessed and judgment entered by the Commissioner of the General Land Office without the award of preference right to contestant. Due service of notice, either personally or by publication, as provided by Rule 8, must appear in all such cases. At the end of the period herein prescribed the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office, and notify the parties by registered mail of the action taken.

[4—109.]

## APPLICATION FOR REPAYMENT.

Department of the Interior,  
General Land Office.

.....  
The Commissioner of the General Land Office:

Sir: I hereby make application for the return of the purchase-money paid on ..... Entry, No. ...., for the .....

(Kind.)

Section ....., Township ....., Range ....., ..... Meridian, as per Receiver's Receipt,\* No. ...., issued at ....., dated .....; and on oath declare that I have not sold, assigned, nor in any manner encumbered, the title to the land described, and that the same has not become a matter of record. ....

.....  
(Signature of applicant.)

.....  
(Post-office address.)

State of ....., County of ....., ss.

Subscribed and sworn to before me this ..... day of .....

.....  
(Official designation.)

\* If the receipt has been lost or destroyed, so state.

The above affidavit may be made before the register or receiver or any officer authorized to administer oaths. When made before a justice of the peace, a certificate of official character is required.

## Notes.

1. Where the title has become a matter of record, the words "except as shown by the accompanying evidence" will be added to the affidavit.

2. Where the title has become a matter of record or patent has issued, a deed of relinquishment, duly executed and recorded, must be filed, together with a certificate of the proper officer showing what appears upon his records touching the title, and that the same is fully restored to the United States.

3. If the application is made by an assignee or legal representative, it must be supported by satisfactory proof of the right of such person to present the claim.

4. The application, with all the papers in the case, may be transmitted to the Commissioner of the General Land Office direct, or through the register and receiver.

For full information see General Land Office Circular of January 22, 1901 (30 L. D., 430).



## [Form Q.]

## ASSIGNMENT.

United States Land Office,  
Billings, Mont.

Know All Men by These Presents, That I, ....., of ....., for and in consideration of the sum of ..... dollars, in lawful money of the United States of America, to me by said ..... paid, the receipt whereof is hereby acknowledged, do by these presents sell, assign, transfer and set over unto the said ..... all my right, title, and interest in and to those certain lands sold in pursuance of the President of the United States under date of September 9, 1910, in accordance with the Act of April 27, 1904, an Act to ratify agreement with the Crow tribe of Indians (33 U. S. Statutes at Large, page 352), and which said lands are described in the certificate of sale Serial No. ...., issued ....., Register U. S. District Land Office, Billings, Montana, on the ....., as follows, to-wit:

Together with all and singular tenements, hereditaments, and appurtenances thereunto belonging in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also possession, claim and demand whatsoever, as well as in law as in equity, and to every part and parcel thereof.

To have and to hold the same unto the ....., his heirs, executors, administrators and assigns, subject nevertheless to the covenants, conditions and payments therein required to be made, and subject also to the terms, conditions and payment hereinafter to be made, and in accordance with the laws, proclamation and certificate of sale, as well as the departmental regulations thereunder and applicable thereto, all of which the said ..... submits and agrees to, and with such full understanding accepts this assignment.

And I hereby fully authorize and empower the said ..... upon his compliance with the terms and conditions of said sale, laws and proclamation and departmental regulations thereunder, and upon the full and complete payment of all money due upon said land to demand and receive patent to the said land, in the same manner, to all events and purposes as myself might or could do, were these presents not executed.

In witness whereof, I have hereunto set my hand and seal this .....

Signed, sealed and delivered in the presence of .....

State of ....., County of ....., ss.

On the ..... day of ....., 191., before me, ....., Notary Public in and for said county and State, personally appeared ....., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.)

(Should be executed before U. S. Commissioner or Clerk of Court of record.)

## Affidavit of Assignee.

State of ....., County of ....., ss.

....., being first duly sworn, on oath deposes and says: That he is the identical person named as assignee in the hereunto attached and foregoing assignment; that the bidder for said land, at the sale of the same, did not purchase said land for this affiant, either directly or indirectly, and that he was not interested in said land as a purchaser from the Government, either directly or indirectly, and he hereby asks that he be allowed

to make the annual payments when due upon said land, in accordance with the law and regulations under which the same was originally sold.

(Seal.)

Subscribed and sworn to before me this ..... day of ....., 191..

(This affidavit should be executed before a U. S. Commissioner or Clerk of court of record.)

Note.—This form may be used for transfer of lands sold for benefit of Indians by making proper modifications.

.....Land District.

Department of the Interior,

General Land Office.

To the Honorable Commissioner of the General Land Office.

Sir: I respectfully make application for extension of time in which to establish residence on my homestead entry No. .... for the ....., Sec. ...., T. ...., Range ...., and for such purpose and to that end I respectfully represent that I was prevented from establishing my residence thereon owing to the following reasons: .....

(Here state grounds for extension of time, which must be confined to climatic reasons, sickness, or other unavoidable cause.)

Subscribed and sworn to before me this ..... day of ....., 19.., at my office in .....

(Official designation.)

Note.—If the ground for extension is sickness, certificate of the attending physician ought to be furnished. The application should be corroborated by at least one witness, and the following form may be used:

State of ....., County of ....., ss.

....., of ....., and ....., of ....., being duly sworn on oath, each for himself, and not one for the other, depose and says: I am acquainted with the above named ....., who is an applicant for extension of time in which to establish residence on his homestead; I know the statements made by him to be true of my own knowledge.

Subscribed and sworn to before me this ..... day of ....., 19.., at my office in .....

(Official designation.)

[Form —.]

## DESERT ENTRIES.

Verification of map, plat or diagram.

State of ....., County of ....., ss.

....., being first duly sworn on oath, deposes and says: that he is the same identical person who has this day made application to make desert land entry of the following described lands: ..... That the hereto attached or foregoing map, plat, or diagram correctly shows the method to be by him employed in reclaiming said land from desert to agriculture in character.

Subscribed and sworn to before me this ..... day of ....., 19.., in my office at .....

(Official designation.)



## ADDENDA.

### RECLAMATION.

#### PATENTS FOR HOMESTEAD ENTRYMEN PROVIDED UPON FINAL PROOF, AND PAYMENT OF ALL CHARGES DUE TO DATE—LIEN RESERVED TO U. S.—SUITS IN DISTRICT COURTS—FISCAL AGENTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any homestead entryman under the Act of June seventeenth, nineteen hundred and two, known as the reclamation Act, including entrymen on ceded Indian lands, may, at any time after having complied with the provisions of law applicable to such lands as to residence, reclamation and cultivation, submit proof of such residence, reclamation and cultivation, which proof, if found regular and satisfactory, shall entitle the entryman to a patent, and all purchasers of water-right certificates on reclamation projects shall be entitled to a final water-right certificate upon proof of the cultivation and reclamation of the land to which certificate applies, to the extent required by the reclamation Act for homestead entrymen: Provided, That no such patent or certificate shall issue until all sums due the United States on account of such land or water right at the time of issuance of patent or certificate have been paid.

Sec. 2. That every patent and water-right certificate issued under this Act shall expressly reserve to the United States a prior lien on the land patented or for which water right is certified, together with all water rights appurtenant or belonging thereto, superior to all other liens, claims or demands whatsoever for the payment of all sums due or to become due to the United States or its successors in control of the irrigation project in connection with such lands and water rights.

Upon default of payment of any amount so due title to the land shall pass to the United States free of all encumbrance, subject to the right of the defaulting debtor or any mortgagee, lien holder, judgment debtor, or subsequent purchaser to redeem the land within one year after the notice of such default shall have been given by payment of all moneys due, with eight per centum interest and cost. And the United States, at its option, acting through the Secretary of the Interior, may cause land to be sold at any time after such failure to redeem, and from the proceeds of the sale there shall be paid into the reclamation fund all moneys due, with interest as herein provided, and costs. The balance of the proceeds, if any, shall be the property of the defaulting debtor or his assignee: Provided, That in case of sale after failure to redeem under this section the United States shall be authorized to bid in such land at not more than the amount in default, including interest and costs.

Sec. 3. That upon full and final payment being made of all amounts due on account of the building and betterment charges to the United States or its successors in control of the project, the

United States or its successors, as the case may be, shall issue upon request a certificate certifying that payment of the building and betterment charges in full has been made and that the lien upon the land has been so far satisfied and is no longer of any force or effect except the lien for annual charges for operation and maintenance: Provided, That no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable lands for which entry or water right application shall have been made under the said reclamation Act of June seventeenth, nineteen hundred and two, and Acts supplementary thereto and amendatory thereof, before final payment in full of all instalments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said Acts nor a water right sold or recognized for such excess; but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition; and every excess holding prohibited as aforesaid shall be forfeited to the United States by proceedings instituted by the Attorney General for that purpose in any court of competent jurisdiction; and this proviso shall be recited in every patent and water-right certificate issued by the United States under the provisions of this Act.

Sec. 4. That the Secretary of the Interior is hereby authorized to designate such bonded fiscal agents or officers of the Reclamation Service as he may deem advisable on each reclamation project, to whom shall be paid all sums due on reclamation entries or water rights, and the officials so designated shall keep a record for the information of the public of the sums paid and the amount due at any time on account of any entry made or water right purchased under the reclamation Act; and the Secretary of the Interior shall make provision for furnishing copies of duly authenticated records of entries upon payment of reasonable fees, which copies shall be admissible in evidence, as are copies authenticated under section eight hundred and eighty-eight of the Revised Statutes.

Sec. 5. That jurisdiction of suits by the United States for the enforcement of the provisions of this Act is hereby conferred on the United States district courts of the districts in which the lands are situated.

(Public No. 256, Approved, August 9, 1912.)

## **RECLAMATION.**

### **DESERT LANDS—PATENTS TO BE ISSUED ENTRYMEN—ACT OF AUGUST 9, 1912, AMENDED.**

That any desert-land entryman whose desert-land entry has been embraced within the exterior limits of any land withdrawal or irrigation project under the Act of June seventeenth, nineteen hundred and two, known as the reclamation Act, and who may have obtained a water supply for the land embraced in any such desert-land entry from the reclamation project by the purchase of a water-right cer-



tificate, may at any time after having complied with the provisions of the law applicable to such lands and upon proof of the cultivation and reclamation of the land to the extent required by the reclamation Act for homestead entrymen, submit proof of such compliance, which proof, if found regular and satisfactory, shall entitle the entryman to a patent and a final water-right certificate under the same terms and conditions as required of homestead entrymen under the Act entitled "An Act providing for patents on reclamation entries, and for other purposes, approved August ninth, nineteen hundred and twelve."

(Part of Public No. 340, Approved, August 26, 1912.)

### **Scrip.**

(See "Forest Lands," "National Parks.")

### **State Lands.**

#### **ARIZONA ALLOWED TO SELECT 2,000 ACRES WITHIN FORMER FT. GRANT MILITARY RESERVATION FOR ITS CHARITABLE AND PENAL GRANT.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands, together with the improvements thereon, within that part of the former Fort Grant Military Reservation, in the State of Arizona; situate and being outside the boundaries of the Crook National Forest, be, and the same hereby are, made subject to selection by the State of Arizona in partial satisfaction of the grant of one hundred thousand acres made to it for State charitable, penal, and reformatory institutions by section twenty-five of the Act of Congress approved June twentieth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page five hundred and fifty-seven): Provided, That such selection shall be made within three years from the date of approval of this Act: Provided further, That no more than two thousand acres of such lands shall be selected under the provisions of this Act.

(Public No. 263, Approved, August 13, 1912.)

### **Withdrawals.**

#### **ACT OF JUNE 25, 1910, AMENDED—ONLY CHANGE: "METALLIFEROUS" SUBSTITUTED FOR "MINERALS OTHER THAN COAL, OIL, GAS, AND PHOSPHATES"—AND CALIFORNIA ADDED TO SIX STATES IN WHICH THERE SHALL BE NO NEW FOREST RESERVES.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of the Act of Congress approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), be, and the same hereby is, amended to read as follows:

"Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: Provided, That the rights

of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: Provided further, That this Act shall not be construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June twenty-fifth, nineteen hundred and ten: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress." (Public No. 316, Approved, August 24, 1912.)

[Public—No. 316.]

[S. 5679.]

An Act to amend section two of an Act to authorize the President of the United States to make withdrawals of public lands in certain cases, approved June twenty-fifth, nineteen hundred and ten.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of the Act of Congress approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), be, and the same hereby is, amended to read as follows:

"Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: Provided further, That this Act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June twenty-fifth, nineteen hundred and ten: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of



this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress."

Approved, August 24, 1912.

## NATIONAL PARKS.

### ACQUIREMENTS OF PATENTED LANDS IN YOSEMITE—SCRIP PROVIDED FOR.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior for the purpose of eliminating private holdings within the Yosemite National Park and the preservation intact of the natural timber along the roads in the scenic portions of the park, both on patented and park lands, is hereby empowered, in his discretion, to obtain for the United States the complete title to any or all of the lands held in private ownership within the boundaries of said park, by the exchange of decayed or matured timber, that can be removed from such parts of the park as will not affect the scenic beauty thereof, for lands of equal value held in private ownership therein, and also, in his discretion, to exchange for timber standing near the public roads on patented lands timber of equal value on park lands in other parts of the park.

Sec. 2. That the value of patented lands within the park offered in exchange, and the value of the timber on park lands proposed to be given in exchange for such patented lands, shall be ascertained in such manner as the Secretary of the Interior may, in his discretion, direct, and all expenses incident to ascertaining such values shall be paid by the owners of said patented lands, and such owners shall, before any exchange is effective, furnish the Secretary of the Interior evidence satisfactory to him of title to the patented lands offered in exchange, and if the value of the timber on park lands exceeds the value of the patented lands deeded to the Government in the exchange such excess, shall be paid to the Secretary of the Interior by the owners of the patented lands before any of the timber is removed from the park, and shall be deposited and covered into the Treasury as miscellaneous receipts. The same course shall be pursued in relation to exchange for timber standing near public roads on patented lands for timber to be exchanged on park lands: Provided, That the lands conveyed to the Government under this Act shall become a part of the Yosemite National Park.

Sec. 3. That all timber must be cut and removed from the park under regulations to be prescribed by the Secretary of the Interior, and any damage which may result to the roads or any part of the park in consequence of the cutting and removal of the timber from

the reservation shall be borne by the owners of the patented lands, and bond satisfactory to the Secretary of the Interior must be given for the payment of such damages, if any, as shall be determined by the Secretary of the Interior.

Sec. 4. That the Secretary of the Interior may also sell and permit the removal of such matured or dead or down timber as he may deem necessary or advisable for the protection or improvement of the park, and the proceeds derived therefrom shall be deposited and covered into the Treasury as miscellaneous receipts.

(Public No. 117, Approved, April 9, 1912.)

## AGRICULTURAL ENTRIES.

### ON OIL AND GAS LANDS IN UTAH—HOMESTEADS, DESERTS, ISOLATED TRACTS, CAREY ACT SELECTIONS—MINERAL RESERVED TO U. S.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act unreserved public lands of the United States in the State of Utah, which have been withdrawn or classified as oil lands, or are valuable for oil, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert-land law, to selection by the State of Utah under grants made by Congress and under section four of the Act approved August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and to withdrawal under the Act approved June seventeenth, nineteen hundred and two, known as the reclamation Act, and to disposition in the discretion of the Secretary of the Interior under the law providing for the sale of isolated or disconnected tracts of public lands, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the oil and gas in such lands and of the right to prospect for, mine, and remove the same. But no desert entry made under the provisions of this Act shall contain more than one hundred and sixty acres: Provided, That those who have initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this Act, on lands withdrawn or classified as oil lands, may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this Act.

Sec. 2. That any person desiring to make entry under the homestead laws or the desert-land law, and the State of Utah desiring to make selection under section four of the Act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, or under grants made by Congress, and the Secretary of the Interior in withdrawing under the reclamation Act lands classified as oil lands, or valuable for oil, with a view of securing or passing title to the same in accordance with the provisions of said Acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of this Act.

Sec. 3. That upon satisfactory proof of full compliance with the provisions of the laws under which entry is made and of this Act



the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the oil and gas in the lands so patented, together with the right to prospect for, mine, and remove the same upon rendering compensation to the patentee for all damages that may be caused by prospecting for and removing such oil or gas. The reserved oil and gas deposits in such lands shall be disposed of only as shall be hereafter expressly directed by law.

(Public No. 314, Approved, August 24, 1912.)

## **FOREST LANDS.**

### **TIMBER, MATURE, DEAD AND DOWN, TO BE SOLD HOMESTEADERS AND FARMERS AT ACTUAL COST.**

That the Secretary of Agriculture, under such rules and regulations as he shall establish, is hereby authorized and directed to sell at actual cost, to homestead settlers and farmers, for their domestic use, the mature, dead, and down timber in national forests, but it is not the intent of this provision to restrict the authority of the Secretary of Agriculture to permit the free use of timber as provided in the Act of June fourth, eighteen hundred and ninety-seven.

(Part of Public No. 261, Agricultural Appropriation Act, Approved, August 10, 1912.)

## **HOMESTEADS.**

### **SETTLERS ON ENLARGED HOMESTEADS GIVEN PREFERENCE RIGHTS —MUST ENTER WITHIN THREE MONTHS—ACT OF MAY 14, 1880, AMENDED.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section three of the Act of Congress approved May fourteenth, eighteen hundred and eighty (Twenty-first Statutes at Large, page one hundred and forty), be, and the same is hereby, amended by adding thereto the following:

Provided, That any settler upon lands designated by the Secretary of the Interior as subject to the provisions of sections one to five of the enlarged homestead Acts of February nineteenth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page six hundred and thirty-nine), and June seventeenth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page five hundred and thirty-one), shall be entitled to the preference right of entry accorded by this section, provided he shall have plainly marked the exterior boundaries of the lands claimed as his homestead: **And provided further,** That after the designation by the Secretary of the Interior of public lands for entry under the nonresidence provisions of the enlarged homestead Acts of February nineteenth, nineteen hundred and nine, and June seventeenth, nineteen hundred and ten, any person who shall have plainly marked the exterior boundaries of the lands claimed under said provisions of law and made valuable improvements thereon shall have a preference right to enter the lands so claimed and improved at any time within three months after the date on which such lands become subject to entry; but such right

shall forfeit unless the settler or claimant under the provisions of the enlarged homestead Acts shall annually cultivate and improve the lands in the form and manner and to the extent therein required following date of initiation of his claim hereunder.

(Public No. 258, Approved, August 9, 1912.)

## **HOMESTEADS.**

### **THREE-YEAR LAW AMENDED—FAILURE TO GIVE NOTICE OF ELECTION SHALL NOT PREJUDICE RIGHTS.**

That the failure of a homestead entryman to give notice of election of making his proof as required by the Act of June sixth, nineteen hundred and twelve, being an Act to amend sections two hundred and ninety-one and two hundred and ninety-seven of the Revised Statutes of the United States, relating to homesteads, shall not in anywise prejudice his rights to proceed in accordance with the law under which such entry was made.

(Part of Public No. 302, Approved, August 24, 1912.)

[Circular No. 176.]

### **THREE-YEAR HOMESTEAD LAW—ELECTION.**

Department of the Interior,  
General Land Office,  
Washington, October 1, 1912.

Registers and Receivers,

United States Land Offices.

Sirs: Your attention is directed to the following provision in the act approved August 24, 1912 (Public, No. 302), making appropriation for sundry civil expenses of the Government for the fiscal year ending June 30, 1913:

That the failure of a homestead entryman to give notice of election of making his proof as required by the act of June sixth, nineteen hundred and twelve, being an act to amend sections twenty-two hundred and ninety-one (2291) and twenty-two hundred and ninety-seven (2297) of the Revised Statutes of the United States relating to homesteads, shall not in anywise prejudice his rights to proceed in accordance with the law under which such entry was made.

In view of the foregoing, paragraph 22, circular No. 142, of July 15, 1912, is no longer in force.

In this connection you will observe the following provision of paragraphs 18 and 19 of said circular:

By the section I am authorized, under rules and regulations to be prescribed by me, to reduce the required area of cultivation. Acting thereunder, I have prescribed the following rule to govern action on proof where the homestead entry was made prior to June 6, 1912, but through failure of election must be adjudicated under the new law.

Respecting cultivation necessary to be shown upon such an entry, in all cases where, upon considering the whole record, the good faith of the entryman appears, the proof will be acceptable if it



shows cultivation of at least one-sixteenth for one year and of at last one-eighth for the next year and each succeeding year until final proof, without regard to the particular year of the homestead period in which the cultivation of the one-sixteenth was performed.

The new law also requires that the proof shall be made within five years from date of entry, and if the entry is to be administered under that law the department is not authorized to extend the period within which proof may be made, but when submitted after that time, in the absence of adverse claims, the entry may be submitted to the board of equitable adjudication for confirmation.

Very respectfully,

S. V. PROUDFIT,  
Assistant Commissioner.

Approved:

SAMUEL ADAMS,  
First Assistant Secretary.

## TOWNSHIP PLAT.

[4—590.]

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0	5	4	3	2	1
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